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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 4. CALIFORNIA SCHOOL FINANCE AUTHORITY

NOTICE OF PROPOSED RULEMAKING ACTION

Article 3, Sections 10192 through 10199 Title 4, Division 15 California Code of Regulations

NOTICE IS HEREBY GIVEN that the California School Finance Authority (CSFA), organized and operating pursuant to Sections 17170 through 17199.5 of the Education Code, proposes to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action. Any person interested may present written comments relevant to the proposed action to the attention of the Contact Person as listed in this Notice no later than 5:00 p.m. on Monday, January 23, 2012. The CSFA Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person(s) designated in this notice as Contact Person and will be mailed to those persons who submit statements related to this proposal or who have requested notification of any changes to the proposal.

Proposed Regulatory Action

CSFA proposes to adopt Sections 10192, 10193, 10194, 10195, 10196, 10197, 10198 and 10199 of Title 4 of the California Code of Regulations (Regulations) as permanent regulations. The Regulations implement CSFA's responsibilities related to the Charter School Facilities Credit Enhancement Grant Program (Program).

Authority and Reference

Authority: Sections 17179 and 17180, Education Code. Section 17179 provides CSFA with the authority to do all things reasonably necessary to carry out its responsibilities. Section 17180(o) of the Education Code provides CSFA the authority to adopt guidelines for grants, bonds, and other evidences of indebtedness.

Reference: Sections 17173, 17180, 17199.4, 47600 et seq., 47605, and 47612.5 of the Education Code; and Section 5110 et seq. of the Corporations Code. The Regulations include a number of the requirements of the Program contained in the reference code provisions. They also rely on a number of provisions in the Charter Schools Act of 1992, commencing with section 47600 of the Education Code. Section 17180(d) provides CSFA with the authority to receive grants from the federal government.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CSFA was created in 1985 to assist school districts and community college districts in financing school construction projects (Education Code section 17170, et seq.). CSFA is authorized to adopt bylaws for the regulation and conduct of its business, is vested with all powers reasonably necessary to carry out its powers and responsibilities, and may receive and accept grants from a federal agency (Education Code sections 17179 and 17180).

In 2010, the U.S. Department of Education approved a grant award of \$8,300,000 to CSFA pursuant to the Credit Enhancement for Charter School Facilities Program (CFDA # 84.354A), authorized under Title V, Part B, Subpart 1 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001. Program funds may be applied toward providing credit enhancement to facilitate the purchase, construction, and/or renovation of facilities for California public charter schools. Regulations implementing the Program must be in place to allow CSFA the ability to establish application and eligibility requirements, eligible uses of Program funds, criteria for evaluation and selection, and internal controls to ensure the integrity of the Program. In addition regulations are necessary to ensure uniformity and consistency in the process of review and selection of applicants for Program awards. These Regulations are critical in order to lower financing costs for the purchase, renovation, or construction of California public charter schools.

The eligibility for Program funds is based on certain factors, including, but not limited to, the charter school having at least 50% of its pupils eligible for free/reduced priced meals as reported by the California De-

partment of Education (CDE), the charter school being in compliance with the terms of its charter and in good standing with its chartering authority, and the charter school having conducted instructional operations for at least one academic year under its current County–District–School Code and charter number issued by the CDE.

Upon determining eligibility, the selection of applicants for Program awards is based on certain additional factors, including, but not limited to, agreement to use the intercept method to repay debt pursuant to Education Code section 17199.4(a)(4), ability to demonstrate leveraging of Program funds at a minimum 8:1 ratio, and ability to secure private placement of debt with an investor or secure an investment grade credit rating from a national credit agency in conjunction with a public sale. The Regulations also allow for consideration of other factors in determining Program awards, including the charter school’s academic performance, an applicant’s commitment of substantial equity toward the project being financed, and an applicant’s having an award of tax–advantaged financing instruments.

The Regulations are briefly summarized below.

Section 10192 — “Purpose”: This section establishes the administration of the Program by CSFA.

Section 10193 — “Definitions”: This section provides definitions for key terms.

Section 10194 — “Applicant Eligibility Criteria”: This section identifies seven basic eligibility criteria required of all Program applicants in order to apply for an award.

Section 10195 — “Eligible Use of Program Funds and Maximum Award”: This section identifies eligible uses of Program funds as well as maximum award amount, term of repayment of financing in conjunction with a Program award, terms for holding, releasing, and returning Program funds.

Section 10196 — “Application Review and Evaluation Criteria”: This section establishes the process and criteria for selection of applicants for Program awards.

Section 10197 — “Content of Application”: This section sets forth the scope of documents required for submission of a complete application, including, but not limited to: completion of a formal Program application; copy of current charter and expiration date; evidence of non–profit status, if applicable; audited financial statements for the past three years; budget for current fiscal year; projected budgets for the next three years; verification of good standing with the chartering authority and compliance with the charter; and evidence of the applicant holding title or other interest in the project facility.

Section 10198 — “Audits and Conflicts of Interest”: This section sets forth specific internal control provisions that allow the State to conduct audits as well as re-

quirements governing conflicts of interest, CSFA’s right to conduct site visits of project facilities, participants’ submission of documents to support continued eligibility, and participants’ compliance with State and Federal requirements throughout the award period.

Section 10199 — “Funding Contingency”: This section sets forth that release of Program funds is contingent upon execution of a Program agreement and CSFA’s receipt and ongoing availability of funds from the U.S. Department of Education.

Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations

No other matters prescribed by statute are applicable to CSFA or to any specific Regulation or class of Regulations pursuant to Section 11346.5(a)(4) of the Government Code pertaining to the proposed Regulations or CSFA.

Mandate on Local Agencies or School Districts

CSFA has determined that the Regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact

CSFA has determined that the Regulations do not impose any additional cost or savings to any state agency, any costs to any local agency or school district requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other non–discretionary cost or savings to any local agency, or any cost or savings in federal funding to the State.

While CSFA will incur additional expenses in implementing and administering the Program, the U.S. Department of Education provides that CSFA may charge such additional expenses for CSFA’s administrative costs against interest earned on the Program grant funds. Therefore, there is no fiscal impact on the State’s General Fund or requirement of additional appropriations by the Legislature. There will be no cost or savings to any State Agency pursuant to Government Code Sections 11346.1(b) or 11346.5(a)(6).

Initial Determination Regarding any Significant, Statewide Adverse Economic Impact Directly Affecting Business

CSFA has made an initial determination that the Regulations will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Effect on Small Businesses

CSFA has determined that the adoption of the Regulations will not affect small business. The Program is a voluntary financing program available to charter schools to assist in the financing of charter school facilities.

Cost Impacts

The CSFA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Effect on Jobs and Business Expansion, Elimination or Creation

Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Cost Impact on Housing

The Regulations will not have any effect on housing costs.

Reasonable Alternatives

In accordance with Government Code Section 11346.5(a)(13), CSFA must determine that no reasonable alternative to the Regulations considered by CSFA or that has otherwise been identified and brought to the attention of CSFA would be more effective in carrying out the purpose for which the Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed Regulations.

CSFA invites interested persons to present statements with respect to alternatives to the Regulations during the written comment period.

Agency Contact Person(s)

Written comments, inquiries, and any questions regarding the substance of the Regulations shall be submitted or directed to:

Katrina Johantgen, Executive Director
California School Finance Authority

at:

304 South Broadway, Suite 550
Los Angeles, CA 90013-1224
(213) 620-4467

or

915 Capitol Mall, Room 222
Sacramento, CA 95814
(916) 651-7710

or

kjohantgen@treasurer.ca.gov
csfa@treasurer.ca.gov

The following person is designated as a backup contact person for inquiries only regarding the Regulations:

Deborah Yang, Senior Staff Counsel
State Treasurer's Office
915 Capitol Mall, Room 110
Sacramento, CA 95814
(916) 653-2995

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the Regulations to CSFA. The written comment period on the Regulations will end at 5:00 p.m. on Monday, January 23, 2012. All comments to be considered by CSFA must be submitted in writing to the Agency Contact Person identified in this Notice by that time. In the event that changes are made to the Regulations during the written comment period, CSFA will also accept additional written comments limited to any changed or modified Regulations for 15 calendar days after the date on which such Regulations, as changed or modified are made available to the public pursuant to title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

Availability of Initial Statement of Reasons, Rulemaking File and Express Terms of Proposed Regulations

CSFA has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at CSFA's office at 915 Capitol Mall, Sacramento, California, during normal business hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the Regulations. Copies of these items are available upon request, from the Agency Contact Person designated in this Notice. The Sacramento address will also be the location for inspection of the rulemaking file and any other public records, including

reports, documentation and other materials related to this proposed regulatory action. In addition, the rule-making file, including the Initial Statement of Reasons and the proposed text, may be viewed on CSFA's Web site at www.treasurer.ca.gov/csfa.

Public Hearing

No public hearing regarding the Regulations has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to CSFA at least 15 days before the end of the written comment period. Such request must be addressed to the Agency Contact Person identified in this Notice and should specify the Regulations for which the hearing is being requested.

15-Day Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested, CSFA may adopt the Regulations substantially as described in this Notice, without further notice. If CSFA makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public (including through CSFA's Web site described above) for at least fifteen (15) calendar days before CSFA adopts the proposed Regulations, as modified. Inquiries about and requests for written copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice.

Availability of Final Statement of Reasons

CSFA is required to prepare a Final Statement of Reasons pursuant to Government Code Section 11346.9. Once CSFA has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy and will be available on CSFA's Web site described above. Written requests for copies should be addressed to the Agency Contact Person identified in this Notice.

TITLE 5. COMMISSION ON TEACHER CREDENTIALING

Proposed Amendments to Title 5 of the California Code of Regulations Pertaining to Fingerprint Submissions

Notice of Proposed Rulemaking

The Commission on Teacher Credentialing proposes to amend the regulatory action described below after

considering all comments, objections and recommendations regarding the proposed action.

Public Hearing

A public hearing on the proposed actions will be held:

January 27, 2012
9:00 a.m.
Commission on Teacher Credentialing
1900 Capitol Avenue
Sacramento, California 95811

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments by fax, through the mail, or by e-mail on the proposed action. The written comment period closes at 5:00 p.m. on January 23, 2012. Comments must be received by that time or may be submitted at the public hearing. You may fax your response to (916) 322-0048; write to the Commission on Teacher Credentialing, attn. Tammy A. Duggan, 1900 Capitol Avenue, Sacramento, California 95811; or submit an email at tduggan@ctc.ca.gov.

Any written comments received 15 days prior to the public hearing will be reproduced by the Commission's staff for each member of the Commission as a courtesy to the person submitting the comments and will be included in the written agenda prepared for and presented to the full Commission at the hearing.

Authority and Reference

Pursuant to the authority vested by Section 44225 of the Education Code, and to implement, interpret or make specific Sections 44339 and 44340 of the Education Code, the Commission on Teacher Credentialing is proposing the amendments to §§80028, 80301, and 80442 of Title 5 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

The Joint Legislative Audit Committee requested that the Bureau of State Audits within the California State Auditor's office conduct an audit of the Commission's educator discipline process. The audit report, completed in April 2011, included a recommendation that the Commission notify the Department of Justice (DOJ) when it no longer needs reports of arrest and prosecution (RAP) sheets on an individual for misconduct perpetrated in California. The audit report determined that the Commission spends between one week and five weeks of staff time each year needlessly reviewing RAP sheets for individuals who do not hold valid documents. The proposed amendments are designed to reduce the number of RAP sheets reviewed by Commission staff each year by invalidating the fingerprint information for individuals who have not held valid documents for more than eighteen months.

Penal Code §11105.2(d) states that “Any agency which submits the fingerprints of applicants for licensing, employment, certification, . . . shall immediately notify the department . . . when the applicant’s license or certificate is revoked, [or] when the applicant may no longer renew or reinstate the license or certificate. . . .” Notifying the DOJ that fingerprint information is not needed will allow the DOJ to discontinue the notification of subsequent arrest reports process for the affected individuals.

The Commission solicited input regarding the invalidation of fingerprints from California school districts, county offices, and institutions of higher education. Through this contact, it was decided that fingerprints should be invalidated for individuals who have not held valid documents for more than eighteen months. Invalidating fingerprints for individuals with documents that have lapsed for less than eighteen months could potentially create additional work for Commission staff, stakeholders, and credential applicants as individuals often take leaves of absence for a year or less due to illness, difficulty finding teaching positions, or to further their education. As stated above, the Commission only receives subsequent RAP sheets for misconduct that occurs in California. Therefore, waiting more than eighteen months after an individual’s documents have lapsed before invalidating their fingerprints increases the odds that he/she will leave the state and commit a crime for which the Commission will not receive notification. The proposed regulations will require individuals to resubmit their fingerprints if they have not held a valid document for more than eighteen months.

The Commission also routinely receives fingerprint information from individuals prior to the submission of an application for a credential, certificate, permit, waiver, or document. The proposed amendments add language stating that the fingerprints for these individuals will be valid for eighteen months. If an application for a credential, certificate, permit, waiver, or document is not received within eighteen months from the date the DOJ provides the Commission with the fingerprint information, the individual’s fingerprints will be invalidated and the resubmission of fingerprints will be required with his/her next application. This will allow the Commission to notify the DOJ that subsequent RAP sheets are not required for individuals who submit their fingerprints more than eighteen months prior to submitting an application for a credential, certificate, permit, waiver, or document.

The Federal Bureau of Investigation (FBI) does not provide subsequent RAP sheets to the Commission; arrest information from the FBI is only provided at the time an individual’s fingerprints are submitted through the DOJ for clearance. Requiring individuals to resubmit fingerprints when they have not held a valid docu-

ment in California for more than eighteen months will allow the Commission to receive updated arrest information from other states. This is especially important because individuals with expired documents may have resided outside California during the lapse in their certification.

Documents Incorporated by Reference: None.

Documents Relied Upon in Preparing Regulations: California State Auditor April 2011 Report 2010–119 available on the Bureau of State Audits website at <http://bsa.ca.gov/pdfs/reports/2010–119.pdf>.

Disclosures Regarding the Proposed Actions

The Commission has made the following initial determinations:

Mandate to local agencies or school districts: None.

Other non-discretionary costs or savings imposed upon local agencies: None.

Cost or savings to any state agency: None.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None.

Significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with section 17500) of the Government Code.

Cost impacts on a representative private person or business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment regarding the creation or elimination of jobs in California [Govt. Code §11346.3(b)]: The Commission has made an assessment that the proposed amendments to the regulations will not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: The proposed regulations will not have a significant adverse economic impact upon business since they apply only to the submission of fingerprint information from individuals seeking documents that authorize service in California’s public schools.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency will be more effective in carrying out the purpose for which the action is proposed or will be as effective.

tive as and less burdensome to affected private persons than the proposed actions.

Contact Person/Further Information

General or substantive inquiries concerning the proposed action may be directed to Tammy A. Duggan by telephone at (916) 323-5354 or Tammy A. Duggan, Commission on Teacher Credentialing, 1900 Capitol Avenue, Sacramento, CA 95811. General question inquiries may also be directed to Hai Jue Theriault at (916) 322-6253 or at the address mentioned in the previous sentence. Upon request, a copy of the express terms of the proposed action and a copy of the initial statement of reasons will be made available. This information is also available on the Commission's website at www.ctc.ca.gov. In addition, all the information on which this proposal is based is available for inspection and copying.

Availability of Statement of Reasons and Text of Proposed Regulations

The entire rulemaking file is available for inspection and copying throughout the rulemaking process at the Commission office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of regulations, and the initial statement of reasons.

Modification of Proposed Action

If the Commission proposes to modify the actions hereby proposed, the modifications (other than non-substantive or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted.

Availability of Final Statement of Reasons

The Final Statement of Reasons is submitted to the Office of Administrative Law as part of the final rulemaking package after the public hearing. When available, it will be placed on the Commission's website at www.ctc.ca.gov or you may obtain a copy by contacting Tammy A. Duggan at (916) 323-5354.

Availability of Documents on the Internet

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout may be accessed through the Commission's website at www.ctc.ca.gov.

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CLEAN FUELS OUTLET REGULATION

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below

to consider adoption of amendments to the Clean Fuels Outlet Regulation.

DATE: January 26, 2012

TIME: 9:00 a.m.

PLACE: Metropolitan Water District Offices
700 North Alameda Street
Los Angeles, California, 90012-2944

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., January 26, 2012, and will continue at 8:30 a.m., on January 27, 2012. This item may not be considered until January 27, 2012. Please consult the agenda for the hearing, which will be available at least 10 days before January 26, 2012, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to California Code of Regulations, title 13, sections 2300, 2302, 2303, 2303.5, 2304, 2307, 2308, 2309, 2311, 2311.5, 2312, 2313, 2314, 2315 and 2318; repeal of sections 2306, 2310, 2316 and 2317; and proposed adoption of section 2306.1., and the incorporated "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," adopted August 5, 1999, as last amended September 27, 2010, which are undergoing amendments pursuant to the LEV III regulatory amendments being considered at the January 26, 2012 hearing.

Background: The existing Clean Fuels Outlet (CFO) regulation requires that certain owner/lessors of retail gasoline stations equip an appropriate number of their stations with clean alternative fuels. The regulation does not require retail CFOs until the number of alternative fuel vehicles projected to be certified on that fuel reaches 20,000 statewide in a given year.

Proposed Regulatory Action: Amendments to the CFO regulation are being proposed to address the gap in hydrogen fueling infrastructure that may occur when the number of government-funded and other hydrogen stations are not adequate to meet fuel demands of growing numbers of fuel cell vehicles (FCV) that automakers are producing to comply with the Zero Emission Vehicle mandate. The proposed amendments to the CFO Regulation include:

- Changing the types of alternative fuel vehicles (AFV) captured under the regulation from those certified as low emission AFVs to only those certified as zero emission vehicles. At first the regulation as amended would only pertain to hydrogen and FCVs. Plug-in electric vehicles are addressed in the proposed changes by adding a

regulatory review followed by recommendations for further actions.

- Changing the regulated party from owner/lessors of retail gasoline outlets to major refiner/importers of gasoline, and modifying how new CFOs are allocated among the regulated parties.
- Increasing from two to three years the FCV reporting requirements and compliance timeframe to provide regulated parties with more time to plan for and build hydrogen stations.
- Adding a 10,000 vehicle activation trigger that would apply to an air basin before the statewide trigger of 20,000 is reached to complement auto manufacturers' early commercialization plans to market FCVs in regional clusters.
- Streamlining the compliance requirements so that they are less prescriptive and more like performance standards, giving regulated parties the flexibility to determine how best to meet the minimum requirements.
- Adding a penalty provision for auto manufacturers if they deliver less than 80 percent of their projected number of FCVs.
- Sunsetting the regulation when the number of CFOs equals 5 percent of the total number of retail gasoline outlets (the existing regulation sunsets at 10 percent).

The proposed changes would have the effect of requiring the construction of public hydrogen stations in geographic areas where automakers are marketing their FCVs.

ARB is currently engaging with energy companies, fuel providers and auto manufacturers in the development of a memorandum of agreement (MOA) to secure the resources needed to ensure that hydrogen fueling stations are built and operated when and where they are needed to support early fuel cell vehicle deployments. If the resources are committed in a timely manner, implementation of the provisions of the proposed regulation may not be necessary.

These amendments, part of the Advanced Clean Cars regulatory proposals to be heard as a package on the same day, thus address multiple pollutant types in the context of California's passenger motor vehicle program as a whole.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action,

which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: 2012 Proposed Amendments to the Clean Fuels Outlet Regulation.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on **December 7, 2012**.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Ms. Leslie Goodbody, Air Pollution Specialist, ZEV Infrastructure Section, (916) 323-2961 and Mr. Gerhard Achtelik, Manager, ZEV Infrastructure Section, (916) 323-8973.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2012/cfo2012/cfo2012.htm>

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or

other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. As detailed in the ISOR and Form 399, ARB staff believes businesses required to comply with this regulation would incur costs associated with installing and operating hydrogen fueling stations but would likely recoup any costs through the sale of fuel to drivers of hydrogen fuel cell vehicles. Additionally, a private person who owns or leases a FCV and purchases hydrogen fuel may be impacted positively or negatively depending on hydrogen price. If hydrogen is priced higher on a miles-per-gallon gasoline-equivalent basis, private persons would pay more for fuel compared to gasoline. Alternatively, if hydrogen is priced lower, private persons would pay less compared to gasoline.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons. Staff expects the proposed amendments to increase jobs associated with station construction, hydrogen production, hydrogen delivery, station operation and maintenance. However, job losses may include those associated with the production, delivery and retail sale of gasoline.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. An assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because the regulated parties, major refiner/importers of gasoline, and major automobile manufacturers do not fall under the category of "small business." However, small businesses engaged in station construction, operation and maintenance, and fuel delivery would benefit from this regulation as discussed above.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

ENVIRONMENTAL ANALYSIS

In accordance with ARB's certified regulatory program, California Code of Regulations, title 17, sections 60006 through 60007, and the California Environmental Quality Act, Public Resources Code section 21080.5, ARB has conducted an analysis of the potential for significant adverse and beneficial environmental impacts associated with the proposed regulatory action. The environmental analysis of the proposed regulatory action can be found in Appendix B of the ISOR.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on **December 12, 2011**. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after **December 12, 2011**, and received no later than **12:00 noon on January 25, 2012**, and must be addressed to the following:

Postal mail: Clerk of the Board,
Air Resources Board
1001 I Street, Sacramento,
California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

You can sign up online in advance to speak at the Board meeting when you submit an electronic board item comment. For more information go to: <http://www.arb.ca.gov/board/online-signup.htm>. Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board encourages

members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted in Health and Safety Code, sections 39600, 39601, 39667, 43013, 43018 and 43101; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975). This action is proposed to implement, interpret, and make specific sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 39667, 43000, 43013, 43018 and 43101; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975).

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; or

- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Re-transmisión de Mensajes de California.

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE "LEV III" AMENDMENTS TO THE CALIFORNIA GREENHOUSE GAS AND CRITERIA POLLUTANT EXHAUST AND EVAPORATIVE EMISSION STANDARDS AND TEST PROCEDURES AND TO THE ON-BOARD DIAGNOSTIC SYSTEM REQUIREMENTS FOR PASSENGER CARS, LIGHT-DUTY TRUCKS, AND MEDIUM-DUTY VEHICLES, AND TO THE EVAPORATIVE EMISSION REQUIREMENTS FOR HEAVY-DUTY VEHICLES

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of a comprehensive set of "LEV III" amendments to the California Low-Emission Vehicle (LEV) regulations. These amendments reduce emissions of criteria pollutants from new light- and medium-duty vehicles by: reducing fleet average emissions from new passenger cars, light-duty trucks, and medium-duty passenger vehicles to super ultra-low-emission vehicle levels by 2025; replacing separate non-methane organic gas (NMOG) and oxides of nitrogen standards (NOx) with combined NMOG plus NOx standards; increasing full useful life durability requirements from 120,000 miles to 150,000 miles, which

guarantees vehicles operate longer at these proposed extremely low emission particulate levels; creating a backstop to assure continued production of super-ultra-low-emission vehicles after partial zero-emission vehicles as a category are moved from the Zero-Emission Vehicle program to the LEV III program in 2018; establishing more stringent particulate matter standards for light- and medium-duty vehicles; establishing zero fuel evaporative emission standards for passenger cars and light-duty trucks, and more stringent evaporative standards for medium-duty vehicles; establishing more stringent supplemental federal test procedure (SFTP) standards for passenger cars and light-duty trucks; and, for the first time, requiring medium-duty vehicles to meet SFTP standards. Other minor amendments (e.g., in-use verification testing requirements, reporting requirements, etc.) are proposed to align existing related procedures with the principal amendments. These amendments also establish more stringent greenhouse gas regulations that: are comprised of three emission standards; a CO₂ standard, a CH₄ standard and a N₂O standard; use a footprint-based approach to reduce emissions from new light-duty vehicles and medium-duty passenger vehicles; provide credits for improvements to the vehicle air conditioning system (either from the use of a refrigerant with a low Global Warming Potential or by incorporating improvements to the efficiency of the system); provide credits for technologies that reduce CO₂ emissions but are not measured on the applicable test cycles; and provide credits for technology innovations on the largest of pickup trucks. This comprehensive set of amendments, part of the Advanced Clean Cars regulatory proposals to be heard as a package on the same day, address multiple pollutant types in the context of California's passenger motor vehicle program as a whole.

DATE: January 26, 2012

TIME: 9:00 a.m.

PLACE: Metropolitan Water District Offices
700 North Alameda Street
Los Angeles, California, 90012-2944

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., January 26, 2012, and may continue at 8:30 a.m., on January 27, 2012. This item may not be considered until January 27, 2012. Please consult the agenda for the hearing, which will be available at least 10 days before January 26, 2012, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to California Code of Regulations, title 13, sections 1900,

1956.8, 1960.1, 1961, 1961.1, 1965, 1968.2, 1968.5, 1976, 1978, 2037, 2038, 2062, 2112, 2139, 2140, 2145, 2147, 2235, and 2317; and to the following documents incorporated by reference therein: "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as last amended September 27, 2010; "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," as last amended September 27, 2010; "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," as last amended September 27, 2010; "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," as last amended January 22, 1990; "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines," as last amended September 27, 2010; "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles," as last amended October 12, 2011; "California Environmental Performance Label Specifications for 2009 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles," as adopted May 2, 2008; "California Test Procedure for Evaluating Substitute Fuels and New Clean Fuels," as adopted November 2, 1993; and proposed new "Specifications for Fill Pipes and Openings of 2015 and Subsequent Motor Vehicle Fuel Tanks;" and proposed new "California Test Procedure for Evaluating Substitute Fuels and New Clean Fuels in 2015 and Subsequent Years."

Proposed adoption in California Code of Regulations, title 13, of new sections 1961.2 and 1961.3 and new "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" incorporated by reference therein, and amendment of the following document incorporated by reference therein: "California Non-Methane Organic Gas Test Procedures," as last amended July 30, 2002.

Background

California's Current Criteria Pollutant Emission Standards

The LEV II Program

In 1999, California adopted the second phase of the Low-Emission Vehicle Program (LEV). These amendments, known as LEV II, set more stringent fleet average non-methane organic gas (NMOG) requirements for model years 2004-2010 for passenger cars and light-duty trucks, established additional emission cate-

gories to provide compliance flexibility with the revised fleet average requirements, and established a new emissions category, partial zero-emission vehicle (PZEV) that could be used toward meeting the zero-emission vehicle requirement. The amendments also expanded the heavier light-duty truck (LDT2) category to include trucks and sport utility vehicles up to 8,500 lbs. gross vehicle weight rating (GVWR) and required these vehicles to meet the same emission standards as passenger cars, and extended full useful life from 100,000 miles to 120,000 miles. The LEV II amendments also established more stringent emission standards for medium-duty vehicles (MDVs) between 8,501–14,000 lbs. GVW. The following table lists the vehicle classes affected by the current LEV program.

Vehicle Class	Weight Range ¹
Passenger cars	All weights
Light-duty truck 1	0–3750 lbs. LVW
Light-duty truck 2	3751 lbs. LVW– 8,500 lbs. GVWR
Medium-duty vehicle	8,501–10,000 lbs. GVWR
	10,001–14,000 lbs. GVWR

Other principal features of the current LEV program follow.

Supplemental FTP Emission Regulations

Emissions from aggressive driving and from air conditioner use are not accounted for during typical emission testing for criteria pollutants, using the Federal Test Procedures (FTP). Instead, these “off-cycle” emissions are subject to the California Supplemental Federal Test Procedures (SFTP).

Evaporative Emission Regulations

Compliance with the current evaporative emission regulations, adopted as part of the LEV II Program, is based on meeting three separate certification “whole vehicle” emission standards. Specifically, these include the running loss emission standard, the three-day diurnal plus high-temperature hot soak (three-day) emission standard, and the two-day diurnal plus moderate-temperature hot soak (two-day) emission standard.² The running loss emission standard ensures evapora-

tive emission control during vehicle driving. The three-day emission standard ensures that the evaporative system can control evaporative emissions for three consecutive hot summer days. The two-day emission standard ensures an effective strategy to purge the vehicle carbon canister.

As an option, a manufacturer may certify its passenger cars and light-duty trucks to more stringent requirements by complying with zero-evaporative emission standards. Specifically, these requirements consist of more stringent three-day and two-day whole vehicle emission standards, as well as a “zero” fuel evaporative emission standard. Over the two-day and three-day test procedures, passenger cars must meet a 0.35 grams per test hydrocarbon emission standard (higher levels are allowed for larger vehicles), which includes fuel and non-fuel hydrocarbon emissions. They must also meet the zero-evaporative emission standards, which require a vehicle to emit no more than 0.054 grams per test of fuel-only evaporative emissions. Currently, manufacturers certify to zero-evaporative emission standards in order to qualify for Partial Zero-Emission Vehicle (PZEV) credits under the ZEV regulatory mandate. This PZEV certification and crediting applies only if the vehicle’s exhaust emissions are also certified to SULEV exhaust standards with a 150,000-mile useful life and a 150,000 mile emission warranty.

Environmental Performance Label

Currently, all new vehicles sold in California must include a California Environmental Performance Label, which provides consumers with a user-friendly scoring system for comparing the relative smog emissions (Smog Score) and global warming emissions (Global Warming Score) from comparable vehicles. Both scores are based on a scale of 1–10, with 10 being the cleanest and 5 representing an average new car.

Since the spring of 2010, ARB staff has advised the U.S. Environmental Protection Agency (USEPA) and the National Highway Traffic Safety Administration (NHTSA) on its proposal to revise the federal Fuel Economy Label, so that as revised it could serve as an alternative to the California Environmental Performance Label.

Important California requirements addressed by the final, adopted federal label included:

- Adding the following statement to the label: “Vehicle emissions are a significant cause of climate change and smog”
- Having a clear statement about upstream emissions and having a clear place to find this information on a regional basis.
- Including all cars in a single rating system rather than segregating by size or class.

¹There are several classifications for vehicles based on weight. Curb weight is defined as the actual weight of the vehicle. Loaded vehicle weight (LVW) is defined as the curb weight plus 300 pounds. Gross vehicle weight rating (GVWR) is the maximum designed loaded weight of the vehicle; this means curb weight of the vehicle plus full payload.

²Compliance with the running loss and three-day emission standards is demonstrated over a three-day diurnal test procedure. Compliance with the two-day emission standard is demonstrated over a two-day diurnal test procedure.

- Including both a Greenhouse Gas and Fuel Economy Rating³ and a Smog Rating from 1 to 10 with 10 being best.

In June 2011, USEPA and NHTSA published 40 CFR Parts 85, 86, and 600 providing requirements for the new Fuel Economy and Environment Label. This new Federal Label is required on all new cars starting with Model Year 2013 and can be affixed earlier on a voluntary basis.

On-Board Diagnostic Systems

Second generation on-board diagnostics (OBD II) systems are comprised mainly of software designed into the vehicle's on-board computer to detect emission control system malfunctions as they occur by monitoring virtually every component and system that can cause an increase in emissions. When an emission-related malfunction is detected, the OBD II system alerts the vehicle owner by illuminating the malfunction indicator light (MIL) on the instrument panel. By alerting the owner of malfunctions as they occur, repairs can be sought promptly, which results in fewer emissions from the vehicle. Additionally, the OBD II system stores important information including identification of the faulty component or system and the nature of the fault, which typically allow for quick diagnosis and proper repair of the problem by technicians. This helps owners achieve less expensive repairs and promotes repairs done correctly the first time.

Manufacturers recently approached ARB staff and requested regulation changes that they indicated were needed immediately in order to ensure compliance when they certify their 2013 model year vehicles. Manufacturers and ARB staff held discussions with interested manufacturers, including a face-to-face meeting on July 27, 2011, to discuss their proposal.

In response to the manufacturers' requests, staff agreed to minor changes to the OBD II regulation, which would have negligible emission impact.

E10 Certification Fuel

The California certification fuel used for testing exhaust and evaporative emissions on passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty gasoline engines and vehicles currently contains the oxygenate methyl tertiary butyl ether (MTBE) in the quantity of 10.8 to 11.2 volume percent (equivalent to 2.0 percent oxygen by weight). MTBE was banned for use in California gasoline starting December 31, 2003. As a result of the ban of MTBE, ethanol became the prevalent oxygenate used in California gasoline. After the ban, refiners began adding approximately 5.7 volume percent ethanol to gasoline, which is equivalent to

2.0 percent oxygen by weight. California gasoline contained 5.7 percent ethanol until the end of 2009. In 2010, California refiners transitioned to producing gasoline containing 10 percent by volume ethanol (E10). Currently, all gasoline in California contains 10 percent ethanol and will continue to contain 10 percent ethanol for the foreseeable future. While the oxygenate and oxygenate amount have changed in in-use California gasoline, the certification fuel on which emission testing is being done has not.

California's Current (Pavley) Greenhouse Gas Emission Standards

Citing compelling and extraordinary air quality and other impacts California faces from global warming, in 2002 the Legislature passed and the Governor signed Assembly Bill (AB) 1493 (Pavley). This bill requires ARB to develop and adopt regulations to achieve the maximum feasible and cost-effective reduction of heat-trapping greenhouse gas emissions from passenger motor vehicles, beginning with the 2009 model year. The Board approved regulations at its September 2004 hearing, and they were adopted in their final form in August 2005.

Subsequent to that hearing, automakers, California, and the federal government committed to a series of actions to resolve ongoing disputes over the California standards through model year 2016. The result of this agreement was the development of a national greenhouse gas program for passenger vehicles that achieves equivalent or better emission reductions as the California program, additional compliance flexibilities provided in the California program, and agreement by California to accept manufacturers' demonstrated compliance with U.S. EPA-adopted greenhouse gas standards as compliance with California's standards for the 2012 through 2016 model years.

Development of California's Proposed Greenhouse Gas Emission Standards

In May of 2010, USEPA and NHTSA issued a Notice of Intent to develop greenhouse gas emission standards for passenger vehicles for the 2017 through 2025 model years. The Notice requested that USEPA and NHTSA work closely with ARB on a 2010 technical assessment that would evaluate technologies and costs to achieve varying levels of GHG emission reductions through model year 2025. The result was a September 2010 *Interim Technical Assessment Report*, jointly authored by USEPA, NHTSA, and ARB. Subsequent to that collaborative technical work, ARB staff has closely monitored the work of USEPA and NHTSA, and the agencies' staffs continued to jointly meet with various stake-

³The federal value is tied only to tailpipe GHGs and excludes other vehicular GHGs (e.g. air conditioning refrigerant).

holders (e.g., individual automakers, automotive suppliers, environmentalists, labor unions), examine updated technical materials, and develop consistent technology assumptions.

Current Proposal

Criteria Pollutant Emission Standards

In order to achieve further criteria emission reductions from the passenger vehicle fleet, staff is proposing several amendments representing a significant strengthening of the current LEV program. The major elements of the proposed LEV III program are:

- A reduction of fleet average emissions of new passenger cars (PCs), light-duty trucks (LDTs) and medium-duty passenger vehicles (MDPVs) to super ultra-low-emission vehicle (SULEV) levels by 2025;
- The replacement of separate NMOG and oxides of nitrogen (NOx) standards with combined NMOG plus NOx standards, providing automobile manufacturers with more flexibility in meeting these stringent standards;
- Increasing full useful life durability requirements from 120,000 miles to 150,000 miles, which guarantees vehicles operate longer at these extremely low emission levels;
- A backstop to assure continued production of super-ultra-low-emission vehicles after PZEVs as a category are moved from the Zero-Emission Vehicle program to the LEV III program in 2018;
- More stringent particulate standards for light- and medium-duty vehicles, which will reduce health effects including premature deaths associated with these emissions;
- Zero fuel evaporative emission standards for PCs and LDTs, and more stringent evaporative standards for medium-duty vehicles (MDVs);
- More stringent supplemental federal test procedure (SFTP) standards for PC and LDTs, including particulate matter (PM) emission standards, which reflect more aggressive real world driving and, for the first time, require MDVs to meet SFTP standards;
- Minor changes to the OBD II regulation, California Code of Regulations (Cal. Code Regs.), title 13, section 1968.2, and its associated enforcement regulation, section 1968.5, which provide slight additional lead time to meet a new monitoring requirement or minimal adjustment of a monitoring threshold for detecting an emission issue; and
- Certification fuel that contains 10 percent ethanol and is representative of current in-use fuel.

Greenhouse Gas Emission Standards

Based on the *Interim Technical Assessment Report*, ARB developed its second generation greenhouse gas regulations that will apply for the 2017 and subsequent model years. These regulations incorporate many of the elements of the proposed national rule, including separate emission standards for carbon dioxide (CO₂), methane (CH₄), and nitrous oxide (N₂O), providing credits toward the CO₂ standard if a manufacturer reduces refrigerant emissions from the vehicle's air conditioning system, and using a footprint-based approach for reducing emissions. Under this footprint-based approach, target CO₂ values are assigned for different vehicles based on the model type and the footprint (i.e. the area described by wheelbase times the average track width of the vehicle) of the vehicle. The overall emission reductions required of each manufacturer would be unique to that manufacturer based on the mix of vehicles it sells. The proposed California regulations also provide credits for using verifiable GHG emission-reduction technologies that are not fully accounted for with the established regulatory test cycle procedures. And the proposed regulations would allow manufacturers to demonstrate compliance with California's proposed standards by demonstrating to ARB National Program compliance.

While ARB has worked closely to coordinate development of the California and national greenhouse programs, there are a number of provisions that are unique to California. First, California's proposed regulations would continue to require that the CO₂-equivalent emissions from electric vehicles, off-vehicle charge capable hybrid electric vehicles (also known as "plug-in" hybrid electric vehicles), fuel cell vehicles, and ethanol vehicles be calculated by taking into account the upstream emissions from these vehicles. Also, the California proposal maintains the current option for a manufacturer to "pool" its sales of vehicles to California, the District of Columbia, and those states that have adopted California's motor vehicle regulations pursuant to section 177 of the Clean Air Act. However, a manufacturer that elects to demonstrate compliance with California's proposed regulations by pooling its sales must continue to maintain and report separate sales and emissions values for each pooled entity.

COMPARABLE FEDERAL REGULATIONS

Criteria Pollutant Emission Standards

There are currently no comparable federal criteria pollutant emission standards for 2015 and subsequent model passenger vehicles as stringent as this proposed California rule.

However, USEPA has indicated that it expects to issue a Notice of Proposed Rulemaking (NPRM) for their “Tier 3” next generation of criteria pollutant emission standards in January 2012, which will apply to 2017 and subsequent model year vehicles. Staff expects the Tier 3 program to be comparable to the California proposed rule in the applicable timeframe. This national rule is expected to be finalized in late 2012.

Greenhouse Gas Emission Standards

There are currently no comparable federal greenhouse gas emission standards that are as stringent as the proposed standards for 2017 and subsequent model passenger vehicles. (The current federal greenhouse gas emission standards for the 2016 and subsequent model years are comparable to those applicable in California in the 2016 model year). However, on November 16, 2011, an NPRM was issued by USEPA and NHTSA for a joint rulemaking that proposes a coordinated federal greenhouse gas emission reduction and fuel economy program for light-duty vehicles, beginning in the 2017 model year. This national rule is expected to be finalized by the end of July 2012. There are no significant differences between the proposed California greenhouse gas regulations and those presented in the NPRM. Furthermore, staff does not expect there to be any significant differences between the proposed California greenhouse gas regulations and those in USEPA’s Final Rule.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: “Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider the “LEV III” Amendments to the California Greenhouse Gas and Criteria Pollutant Exhaust and Evaporative Emission Standards and Test Procedures and to the On-Board Diagnostic System Requirements for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and to the Evaporative Emission Requirements for Heavy-Duty Vehicles.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB’s website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322–2990, on December 7, 2011.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB’s website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Paul Hughes, Manager, Low-Emission Vehicle Implementation Section, at (626) 575–6977, or Ms. Sarah Carter, Staff Air Pollution Specialist, at (626) 575–6845.

Further, the agency representative and designated back-up contact persons, to whom non substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322–4011, or Ms. Trini Balcazar, Regulations Coordinator, (916) 445–9564. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB’s website for this rulemaking at <http://www.arb.ca.gov/regact/2012/leviiighg2012/leviiighg2012.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board’s Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies, except that there is expected to be an unquantifiable reduction in future gasoline tax revenue due to this proposal.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The proposal is expected to increase the annual cost of compliance for vehicle manufacturers that are subject to the requirements of California’s Low-Emission Vehicle regulations by approximately \$40 million per manufacturer, which is assumed to be passed on in full to consumers. The pro-

posal is therefore expected to result in a \$1900 average increase in the purchase price of a new passenger vehicle when the standards include the cost associated with the ZEV program are fully phased in; however, purchasers of these new vehicles are expected to realize an average net savings of \$4,000 per vehicle due to decreased operating costs.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would create approximately 67,000 new jobs and eliminate approximately 30,000 current jobs within the State of California. The proposed regulatory action would not affect the creation or elimination of directly affected businesses within the State of California. However, both directly affected businesses along with businesses in other sectors within the State of California could expand or contract as a result of the proposed regulations. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not directly affect small businesses, because the proposed LEV III regulations do not apply to small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

ENVIRONMENTAL ANALYSIS

In accordance with ARB's certified regulatory program, California Code of Regulations, title 17, sections 60006 through 60007, and the California Environmental Quality Act, Public Resources Code section 21080.5, ARB has conducted an analysis of the potential for significant adverse and beneficial environmen-

tal impacts associated with the proposed regulatory action. The environmental analysis of the proposed regulatory action can be found in Appendix B of the ISOR.

SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on December 12, 2011. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after December 12, 2011 and received no later than 12:00 noon on January 25, 2012, and must be addressed to the following:

Postal mail: Clerk of the Board,
Air Resources Board
1001 I Street, Sacramento,
California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

You can sign up online in advance to speak at the Board meeting when you submit an electronic board item comment. For more information go to: <http://www.arb.ca.gov/board/online-signup.htm>.

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted in Health and Safety Code, sections 38510, 38560, 38562, 39500, 39515, 39600, 39601, 39667, 43006, 43013, 43018, 43018.5, 43101, 43104, 43105, 43200, 43210, 43210.5, and 44036.2, and Vehicle Code section 27156. This action is proposed to implement, interpret, and make specific sections 38501, 38510,

38560, 39002, 39003, 39667, 40000, 43000, 43004, 43006, 43008.6, 43009.5, 43100, 43101, 43101.5, 43102, 43104, 43106, 43205, 43205.5, 43210, 43211, 43212, and 43213, Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; or
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alterno u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916)

322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Re-transmisión de Mensajes de California.

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF THE 2012 AMENDMENTS TO THE CALIFORNIA ZERO EMISSION VEHICLE REGULATION

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of the 2012 amendments to the California Zero Emission Vehicle (ZEV) regulation.

DATE: January 26, 2012

TIME: 9:00 a.m.

PLACE: Metropolitan Water District Offices

700 North Alameda Street

Los Angeles, California, 90012-2944

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., January 26, 2012, and will continue at 8:30 a.m., on January 27, 2012. This item may not be considered until January 27, 2012. Please consult the agenda for the hearing, which will be available at least 10 days before January 26, 2012, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to California Code of Regulations, title 13, sections 1962.1 and 1962.2 (re-numbered to 1962.3), which incorporate by reference "California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes", as adopted December 17, 2008, and last amended December 2, 2009, and proposed adoption of California Code of Regulations, title 13, section 1962.2, which incorporate by reference "California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes," as adopted December 17, 2008, and last amended December 2, 2009.

Background

In 1990, the California Air Resources Board (ARB or the Board) adopted an ambitious program to dramati-

cally reduce the environmental impact of light-duty vehicles (LDV) through the gradual introduction of zero emission vehicles (ZEV) into the California fleet. The ZEV program, which affects passenger cars and light-duty trucks (LDT1 and LDT2), has been adjusted five times since its inception: in 1996, 1998, 2001, 2003, and 2008; to reflect the development of new technologies such as hybrid electric vehicles, natural gas vehicles, longer range battery electric vehicles, and fuel cell vehicles. Through these adjustments the fundamental goal of the program has not changed: the commercialization of ZEV technologies.

At the March 2008 hearing, the Board directed staff to redesign the 2015 and beyond requirements for the ZEV program by strengthening its requirements and focusing primarily on the zero emission drive. Battery electric vehicle (BEV), fuel cell vehicle (FCV), and plug-in hybrid electric vehicle (PHEV) technologies, are included. California would continue to be the central location for advanced, low greenhouse gas (GHG) technology vehicles as they move from the demonstration phase to commercialization.

In 2009, staff undertook an assessment of pathways to meet California's long term 2050 GHG reduction goals in the LDV subsector. It included a review of ZEV technology and a review of current and possible future complementary policies that would be needed to aid in infrastructure development, and a review of market pull policies for ZEVs. Based on the United States Department of Energy vision model, staff developed a California-specific model for the LDV subsector, and concluded that nearly all new vehicle sales by the 2040 model year need to be ZEVs and PHEVs in order to achieve the needed long term emission reductions. The Board directed staff in Resolution 09-66 to prepare amendments to the regulations considering the following:

- Shift focus from only criteria pollutant emission reductions to both GHG and criteria pollutant emission reductions;
- Focus on commercializing low-carbon emitting technologies, such as ZEVs and PHEVs, in a timeframe sufficient to meet the 2050 target of an 80-percent reduction in GHG emissions compared to 1990 levels;
- Take into consideration new low emission vehicle (LEV) III GHG fleet standards and revise the ZEV regulatory structure, credit values, and stringency of the current requirements accordingly.

Description of Proposed Regulatory Action

The ZEV regulation is the most technology-forcing piece of the Advanced Clean Car package. Proposed amendments to the ZEV regulation focus on advanced technologies, simplifying the program where needed,

and increasing stringency for 2018 model year and beyond to help meet long term goals.

Amendments Affecting 2009 through 2017 Model Years

Staff is proposing minor mid-course corrections and clarifications to the current regulation (through the 2017 model year) that will help ensure successful compliance with more stringent 2018 and subsequent model year requirements. The amendments include:

- A. *Provide Compliance Flexibility:* Remove carry forward credit limitations for ZEVs, allowing manufacturers to bank ZEV credits indefinitely for use in later years. Slightly reduce the 2015 through 2017 credit requirement for intermediate volume manufacturers (IVM, less than 60,000 vehicles produced each year), to allow them to prepare for requirements in 2018. Extend the provision that allows ZEVs placed in any state that has adopted the California ZEV regulation to count towards the ZEV requirement through 2017 (i.e. extending the "travel provision" for BEVs through 2017).
- B. *Adjust Credits and Allowances:* Increase credits for a Type V (300 mile FCV) ZEV to appropriately incentivize this emerging technology.
- C. *Add New Vehicle Category:* Add Type 1.5x and Type IIx vehicles as a compliance option for manufacturers to meet up to half of their minimum ZEV requirement. These vehicles are closer to a BEV than to a PHEV because they are designed with primarily zero-emission operation. Their small non-ZEV fuel auxiliary power unit (APU) is specified with limited performance and fuel capacity for limited range extension.

Amendments Affecting 2018 and Subsequent Model Years

Staff is proposing amendments for 2018 and subsequent model years to help achieve early commercialization of ZEVs and transitional zero emission vehicles (TZEV, typically a plug in hybrid electric vehicle) through simplifying the regulation and pushing technology to a higher volume production in order to achieve cost reductions. The amendments include:

- A. *Increase Volume Requirement for 2018 and Subsequent Model Years:* Increase requirements that push ZEVs and TZEVs to nearly 15 percent of new sales by 2025. This will help ensure production volumes are at a level sufficient to bring battery and fuel cell technology down the cost curve and reduce ZEV incremental prices, and provide a greater choice of vehicle types for potential purchasers.
- B. *Focus Regulation on ZEVs and TZEV:* Move the partial zero emission vehicle (PZEV, a near-zero emitting conventional technology) and advanced

technology PZEV (AT-PZEV, typically a non-plug-in hybrid electric vehicle) technology categories from the ZEV regulation to the LEV regulation because they have reached commercial volumes and their relevance to further reducing criteria and GHG emissions can be better governed by the emission performance standards.

- C. *Phase in the LEV III regulation:* Allow manufacturers to use banked PZEV and AT-PZEV credits earned in 2017 and previous model years in the ZEV program, but discount the credits, and place a cap on usage in 2018 and subsequent model years. Focus the 2018 and subsequent model year requirements on ZEVs and TZEVs.
- D. *Amend Manufacturer Size Definitions, Ownership Requirements, and Transitions:* Amend IVM and large volume manufacturer (LVM) size definitions to bring all but the smallest manufacturers under the full ZEV requirements by model year 2018. Align LEV III and ZEV ownership requirements, so that manufacturers who own more than 33.4 percent of each are considered as the same manufacturer for determination of size. Modify transition periods for manufacturers switching size categories. These changes result in applying the ZEV regulation to manufacturers that represent 97 percent of the LDV market.
- E. *Modify Credit System:* Base credits for ZEVs on range, with 50 mile BEVs earning 1 credit each and 350 mile FCVs earning 4 credits each. Allow longer range BEVs (BEVx) which have a limited combustion engine range extender to meet up to half of a manufacturer's minimum ZEV requirement. The range of credits reflect the utility of the vehicle (i.e. the zero emitting miles it may travel) and its expected timing for commercialization. Simplify and streamline TZEV credits based on the vehicle's zero-emission range capability and ability to drive electrically for 10 miles on the more aggressive US 06 drive schedule. In addition to simplifying the program, reduce the spread of credits so that technologies are more evenly treated with less variation in compliance outcomes (numbers of vehicles produced to meet the regulation requirements).
- F. *Modify Travel Provision:* End the Travel Provision for BEVs after model year 2017, so that states that have adopted CA's ZEV program are more likely to receive a proportionate share of ZEVs. Extend the Travel Provision for FCVs until sufficient complementary policies are in place in states having adopted the California ZEV regulation.

This will allow FCV technology to continue to mature, and provide time for Section 177 states to build infrastructure.

- G. *Add GHG-ZEV Over-Compliance Credits:* Allow manufacturers who systematically over comply with the proposed LEV III GHG fleet standard to offset a portion of their ZEV requirement in 2018 through 2021 model years only.

These amendments, part of the Advanced Clean Cars regulatory proposals to be heard as a package on the same day, thus address multiple pollutant types in the context of California's passenger motor vehicle program as a whole.

COMPARABLE FEDERAL REGULATIONS

Currently, there are no comparable federal regulations mandating auto manufacturers to produce PZEVs, AT PZEVs, TZEVs and/or ZEVs.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared an Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The ISOR is entitled: 2012 Proposed Amendments to the California Zero Emission Vehicle Program Regulations.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on **December 7, 2011**.

Upon its completion, a Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Ms. Anna Wong, Air Pollution Specialist, Sustainable Transportation Technology Branch, (916) 323-2410, or Ms. Elise Keddie, Manager, ZEV Implementation Section, (916) 323-8974.

Further, the agency representative and designated back-up contact persons, to whom non-substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board staff has

compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2012/zev2012/zev2012.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB estimates the total impact of the ZEV regulation to regulated manufacturers, apart from all other regulations, to be \$10.2 billion, from model year 2018 through 2025 compliance.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would affect the creation or elimination of jobs within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses. In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer

has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California. Staff's proposed regulations do not impose any new reporting requirements on manufacturers.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

ENVIRONMENTAL ANALYSIS

In accordance with ARB's certified regulatory program, California Code of Regulations, title 17, sections 60006 through 60007, and the California Environmental Quality Act, Public Resources Code section 21080.5, ARB has conducted an analysis of the potential for significant adverse and beneficial environmental impacts associated with the proposed regulatory action. The environmental analysis of the proposed regulatory action can be found in Appendix B of the ISOR.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on **December 12, 2011**. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after **December 12, 2011** and received **no later than 12:00 noon on January 25, 2012**, and must be addressed to the following:

Postal mail: Clerk of the Board,
Air Resources Board
1001 I Street, Sacramento,
California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

You can sign up online in advance to speak at the Board meeting when you submit an electronic board item comment. For more information go to: <http://www.arb.ca.gov/board/online-signup.htm>.

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted in Health and Safety Code, sections 39600, 39601, 43013, 43018, 43101, 43104 and 43105, Health and Safety Code. This action is proposed to implement, interpret, and make specific sections 38562, 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43018.5, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43107, 43204, and 43205.5, Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; or
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo (por decir, sistema Braille, o en impresión grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Re-transmisión de Mensajes de California.

TITLE 14. DEPARTMENT OF FISH AND GAME

OFFICE OF SPILL PREVENTION AND RESPONSE

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Office of Spill Prevention and Response (OSPR) within the Department of Fish and Game, proposes to add Section 791.6, and amend Sections 791.7, 795, and 796 in Subdivision 4 of Title 14 of the California Code of Regulations (CCR). These sections pertain to the Certificate of Financial Responsibility requirements.

PUBLIC HEARING

A public hearing has been scheduled at which any interested party may present statements, orally or in writing, about this proposed regulatory action. The hearing will continue until all testimony is completed, and will be held as follows:

Tuesday, January 24, 2012
Office of Spill Prevention and Response
1700 K Street
Sacramento, CA
First Floor Conference Room
10 a.m.

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OSPR. All written comments must be received by OSPR at this office no later than **5:00 p.m. on January 24, 2012**, in order to be considered. Written comments may be submitted by mail, fax, or e-mail, as follows:

Department of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090
Attention: Joy D. Lavin-Jones
Fax: (916) 324-5662
E-mail: jlavinj@ospr.dfg.ca.gov

PERMANENT ADOPTION OF REGULATIONS

OSPR may thereafter adopt the proposal substantially as described in this Notice, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposals — with changes clearly indicated — will be available for 15 days prior to its adoption from the person designated in this Notice as contact person. The text will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Government Code Section 8670.37.54(b) grants the Administrator the authority to adopt regulations governing policy or other contractual terms, conditions or defenses which are or which are unacceptable in establishing evidence of financial responsibility. Accordingly, the proposed regulations implement, interpret and make specific Government Code Sections 8670.37.51 through 8670.37.57 relating to financial responsibility.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act), enacted in 1990 by Senate Bill 2040, created a comprehensive state oil spill program for marine waters.

The Act mandates that all vessel and marine facility owner/operators shall be prohibited from transporting oil or operating a marine facility which transfers oil to or from a vessel in California, without first obtaining a

certificate demonstrating specified levels of financial responsibility to pay for any costs resulting from oil spills occurring in California marine waters, or in locations which could affect California marine waters.

Pursuant to the authority in the Act, OSPR currently has regulations (Title 14, California Code of Regulations, Sections 791 through 797) which define terms used in the regulations: establish procedures for applying for a California Certificate of Financial Responsibility (COFR); establish required levels of financial responsibility and certificate requirements for owners or operators of vessels and marine facilities, and owners of oil; provide information on the types of evidence required in order to establish financial responsibility; inform the regulated community of those situations in which a certificate may be revoked; and, provide the methods for reporting changes which could affect the certificant's ability to comply with the financial responsibility requirements.

This proposal would amend the regulations as follows:

- A "Purpose and Scope" section has been added to clearly explain that all covered entities shall demonstrate to the Administrator the financial ability to pay for an oil spill and shall submit the appropriate documentation and fee (if applicable) to obtain a COFR, at least 10 calendar days prior to operating or entering marine waters.
- Removes reference to paper certificates and removes obsolete COFR processing information.
- Changes to the timeframes that renewal documentation for insurance coverage needs to be submitted.
- Changes to the timeframes that renewal documentation for P&I club coverage needs to be submitted.
- Clarification and additions to the certificate revocation section, explaining when a COFR may be revoked immediately.
- Language has been added which explains that a COFR is invalid if the underlying evidence of financial responsibility lapses or is otherwise no longer in effect.

SMALL BUSINESS IMPACT STATEMENT

OSPR has determined that the proposed regulations may affect small businesses.

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 8574.10 AND 8670.55

In accordance with Government Code Section 8574.10, these regulations have been submitted to the

Review Subcommittee of the State Interagency Oil Spill Committee for review and comment; and in accordance with Government Code Section 8670.55, these regulations have been submitted to the Oil Spill Technical Advisory Committee for review and comment.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.

Other non-discretionary costs or savings imposed upon local agencies: NONE.

Costs or savings in federal funding to the state: NONE.

Cost impacts on representative private persons or businesses:

These amendments clarify current practices and will, therefore, not result in significant additional costs to private persons or directly affected businesses. The OSPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: NONE.

BUSINESS IMPACTS

OSPR has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

OSPR has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California, and will not result in the elimination of existing businesses nor create or expand businesses in the State of California.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OSPR must determine that no reasonable alternative that has been considered or that has otherwise been identified and brought to the attention of

OSPR would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome than the proposed action.

AVAILABILITY OF DOCUMENTS AND OSPR CONTACT PERSON

OSPR has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. Copies of the exact language of proposed regulations, initial Statement of Reasons, the rulemaking file, the Final Statement Reasons (when available) and other information, if any, may be obtained upon request from the:

Department of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090

In addition, the Notice, the exact language of the proposed regulations, and the Initial Statement of Reasons may be found on the World Wide Web at the following address:

[http://www.dfg.ca.gov/ospr/Law/
regs_under_review.asp](http://www.dfg.ca.gov/ospr/Law/regs_under_review.asp)

Questions regarding the proposed regulations, requests for documents, or any questions concerning the substance of this regulatory action may be directed to Joy Lavin-Jones ((916) 327-0910), or Alexia Retallack ((916) 322-1683).

TITLE 16. CALIFORNIA BOARD OF ACCOUNTANCY

NOTICE IS HEREBY GIVEN that the California Board of Accountancy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at Crowne Plaza Irvine, 17941 Von Karman Avenue, Irvine, CA 92614, at 9:05 a.m. on January 27, 2012. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the California Board of Accountancy at its office not later than 5:00 p.m. on January 23, 2012 or must be received by the California Board of Accountancy at the hearing. The California Board of Accountancy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the per-

son designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 144, 462, and 5010 of the Business and Professions Code; and to implement, interpret or make specific Sections 144, 462, 490, 5063, 5070.1, 5070.5, and 5100 of the Business and Professions Code, and Sections 11105(b)(10) and 11105(e) of the Penal Code; the California Board of Accountancy is considering changes to Division 1 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Business and Professions Code Section 144, mandates that the Board require applicants to submit a full set of fingerprints for the purpose of conducting a criminal history record check. Section 144 further authorizes the Board to obtain and receive criminal history information from the Department of Justice (DOJ) and the United States Federal Bureau of Investigation (FBI).

In addition, existing law in Business and Professions Code Section 5063 requires licensees to disclose certain information, including convictions and license or practice discipline.

1. Adopt Section 37.5 Title 16 of the California Code of Regulations.

Before Section 144 of the Business and Professions Code became effective, a certified public accountant or public accountant licensed prior to January 1, 1998 was not routinely required to submit fingerprints to the Board for purposes of securing a background check by the United States Federal Bureau of Investigation (FBI). This proposed regulation would require all Board licensees for whom an electronic record of his or her fingerprints does not exist in the DOJ's criminal offender record identification database to successfully complete a state and federal level criminal offender record information search conducted through the DOJ prior to renewing after June 30, 2014.

Requiring all licensed certified public accountants and public accountants to submit fingerprints for processing during their next renewal will ensure that the Board receives timely notification of any arrest(s) or conviction(s) from the DOJ in the future in furtherance of its mandate to protect the public.

This proposal would clarify which applicants, other than initial licensing applicants, must submit fingerprints. Applicants renewing in an inactive or retired status, or, actively serving in the U.S. military would be ex-

empt from this requirement. Specifically, it requires, after June 30, 2014, the following licensees to submit fingerprints:

- A licensee applying for renewal as a certified public accountant or public accountant who has not previously submitted fingerprints as a condition of licensure.
- A licensee applying for renewal as a certified public accountant or public accountant for whom an electronic record of the licensee's fingerprints does not exist in the DOJ's criminal offender record identification database (CORI).
- A licensee petitioning the Board for reinstatement of a revoked or surrendered license.
- A licensee returning a license to an active status from an inactive or retired status or following active duty in the United States military.

Following being fingerprinted and a successful CORI search, this regulatory proposal would require licensees to retain either a receipt showing that he or she has electronically transmitted his or her fingerprint images to DOJ, or for those licensees who did not use an electronic fingerprinting system, a receipt evidencing that the licensees' or registrants' fingerprints were taken and submitted to the Board. An applicant for renewal would also be required to pay the actual costs of compliance.

The proposal would also require applicants for renewal to disclose the following on the renewal form:

- whether the applicant has submitted fingerprints as required by this proposal;
- whether the applicant has been convicted of any violation of law omitting traffic infractions under \$1,000 not involving alcohol, dangerous drugs or controlled substances; and,
- whether the applicant has had a certificate or right to practice cancelled, revoked or suspended by any other state or foreign body.

Should an applicant for renewal fail to provide the information required by this proposal, the application will be rendered incomplete and the license will not be renewed until the requirements are met.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Should this proposal go into effect, the CBA will notify all 27,716 active pre-1998 licensees of the fingerprinting requirement. This notification and fingerprinting process will occur over a three-fiscal-year time frame beginning July 1, 2014 and ending June 30, 2017. It has been determined that it will be necessary for the Licensing Division to request,

via BCP, one analyst and two technical staff members on a 2-year limited-term basis. The three additional staff members will assist with the intake, fingerprint verification, and enforcement referrals for this population of licensees. The CBA will be requesting position authority as well as expenditure authority for salary, wages and benefits through FY 2014–15 and FY 2015–16 BCPs for these costs and workload. Consequently, the fiscal impact to the CBA by fiscal year is detailed below.

- FY 2014–15 \$145,434
- FY 2015–16 \$201,633
- FY 2016–17 \$78,399

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:

Of the approximately 27,716 licensees who may be subject to this proposal, 25,509 of them are in-state. In-state licensees are fingerprinted via locally established California live-scan facilities and pay a one-time “rolling” administrative fee that varies by location from \$0 to \$40.00. Each location is permitted to establish its own fee structure but the overall average amount is \$25.00 and this amount is assumed in the calculation. Additionally, a one-time fee of \$51.00 is paid. Consequently a total one-time payment of \$76.00 is assumed per licensee.

California licensees whose address of record is out-of-state (the remaining 2,207 licensees) must submit two inked fingerprint card hardcopies paying a one-time \$51.00 fee. Other out-of-state state jurisdictions set their own administration fees and are comparable to those of California. Consequently, an average \$25.00 rolling fee will also be assumed in this calculation. Although live-scan is available in other states, it is not interconnected with California’s system therefore licensees must submit inked hardcopies. Any additional postage/shipping fees to send the hardcopies to the CBA are the responsibility of the licensee. A total one-time payment of \$76.00 is assumed per licensee.

FY 2014–15 licensees still active that were licensed prior to 1998:

In-state: \$1,938,684 — (25,509 licensees x \$76.00)

Out-of-state: \$167,732 — (2,207 licensees x \$76.00)

Total: \$2,106,416

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are \$76.00 per licensee.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations may affect small businesses. The CBA has identified approximately 27,716 active licensees who may be subject to the fingerprinting portion of the proposal. The CBA does not track statistics relating to sole proprietorships and therefore cannot identify business impacts. It could be assumed that if a licensee working for a firm chooses to pass the fingerprinting expenses on as a business expense, this could be correlated as a business impact. It should be noted that of the 27,716 active licensees identified, some will be employed in sole proprietorships and others with companies and corporations.

While all applicants for renewal will need to disclose certain information on the renewal form under this proposal, there are no costs associated with doing so other than as it relates to fingerprinting. Additionally, there are approximately 750 vendors statewide, including small businesses, which provide fingerprinting services. However, there should be little or no initial or ongoing cost impact upon the vendors because they are already equipped to provide the services.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons are available on the Board's Internet Web site at http://www.dca.ca.gov/cba/laws_and_rules/pubpart.shtml and may also be obtained at the hearing or prior to the hearing upon request from the California Board of Accountancy at 2000 Evergreen Street, Suite 250, Sacramento, California 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named in the following section.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named in the following section or by accessing the Web site listed in the following section.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Matthew Stanley
Address: California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone No.: 916-561-1792
Fax No.: 916-263-3678
E-Mail Address: mstanley@cba.ca.gov

The backup contact person is:

Name: Kari O'Connor
Address: California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone No.: 916-561-4311
Fax No.: 916-263-3678
E-Mail Address: koconnor@cba.ca.gov

Web site Access: Materials regarding this proposal can be found at http://www.dca.ca.gov/cba/laws_and_rules/pubpart.shtml.

TITLE 16. CALIFORNIA BOARD OF ACCOUNTANCY

NOTICE IS HEREBY GIVEN that the California Board of Accountancy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at Crowne Plaza Irvine, 17941 Von Karman Avenue, Irvine, CA 92614, at 9:10 a.m. on January 27, 2012. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the California Board of Accountancy at its office not later than 5:00 p.m. on January 23, 2012 or must be received by the California Board of Accountancy at the hearing. The California Board of Accountancy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 5010, 5018, 5027, 5070.1 and 5134 of the Business and Professions Code; and to implement, interpret or make specific Sections 122, 163, 5010, 5028, 5058.3, 5070.1, 5096, 5109, and 5134 of the Business and Professions Code; the California Board of Accountancy is considering changes to Division 1 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Legislation enacted in 2011 (Stats 2011, ch. 395 (AB 431)) added Section 5070.1 to the Business and Professions Code effective January 1, 2012 allowing the Board to establish, by regulation, a system for placing a license in a retired status for certified public accountants and public accountants who are not actively engaged in the practice of public accountancy or any activity which requires them to be licensed by the Board. This proposal would implement the requirements for obtaining and maintaining such a license in a retired status. The regulatory proposal is as follows:

1. Adopt New Article 2.5 in Division 1 of Title 16 of the California Code of Regulations.

This proposal would add a new Article 2.5 to Division 1 in the California Board of Accountancy's regulations that would be entitled "Retired Status."

2. Adopt Section 15 in Title 16 of the California Code of Regulations.

This proposal would adopt Section 15 in a newly created Article 2.5 regarding retired status. This proposal would allow licensees to apply to have their licenses placed in retired status. This new article would not prohibit a holder of a license in a retired status from receiving compensation or profits from a public accounting firm provided the licensee does not engage in the practice of public accountancy.

In addition, this proposal states that failure to maintain compliance with this new Article and Sections 5058.3 or 5070.1 of the Business and Professions Code is grounds for discipline of the retired license.

3. Adopt Section 15.1 in Title 16 of the California Code of Regulations.

This proposal would require licensees to apply for placing their licenses in retired status using Form 11R-48 (11/11) which is incorporated by reference. Form 11R-48 (11-11) would include the following:

- (1) Require disclosure of the name, address of record, license number, email address (optional), personal and business telephone number;
- (2) Require disclosure of whether the applicant intends to practice public accountancy with a license in retired status;
- (3) Require disclosure of whether the applicant is aware of any pending or current enforcement action against his or her license;
- (4) Require disclosure of whether the applicant has held a license as a CPA or PA in the U.S. or its territories for a minimum of 20 total years and then require the applicant to provide the state or territory in which the license was held, the license number and the number of years the license was held;
- (5) Require disclosure of whether the applicant held a CPA or PA license in an active status for a minimum of five years;
- (6) Provide a notice regarding collection and use of personal information given on the application; and,
- (7) Require the applicant to certify his or her statements under penalty of perjury.

The proposal would require a licensee to have held a license as a certified public accountant (CPA) or public accountant (PA) in the United States or its territories for a minimum of twenty years, and that five of those years

must have been in an active status as a California licensee. Failure to meet the requirements of this new Article and Section 5070.1 of the Business and Professions Code is grounds for denying the application.

The proposal would also require the applicant to pay the application fee set forth in newly proposed Section 70(i)(1).

4. Adopt Section 15.2 in Title 16 of the California Code of Regulations.

This proposal would require the holder of a license in a retired status to continue to renew the license on the same renewal schedule they were on prior to being granted retired status as described in Section 5070.5 of the Business and Professions Code. It exempts a licensee with a license in a retired status from the regular renewal fee and the regular continuing education (CE) requirements.

5. Adopt Section 15.3 in Title 16 of the California Code of Regulations.

This proposal would allow the holder of a license in a retired status to restore that license to an active status at the time of renewal by paying the fee set forth in newly proposed Section 70(i)(2) and complying with the CE requirements of existing Section 87 with a minimum of 20 hours of CE in the year prior to renewal and 12 hours in specific subject areas prescribed in existing Section 88(a)(1).

This proposal would allow the holder of a license in a retired status to restore that license to an active status prior to the next renewal date by paying the fee described in Section 70(i)(2) and completing the CE requirements set forth in existing Section 87.1.

6. Adopt Section 15.4 in Title 16 of the California Code of Regulations.

This proposal limits the number of times a licensee may be granted retired status to two.

7. Amend Section 70 in Title 16 of the California Code of Regulations.

This proposal would set the fee for application for a license to be placed in a retired status at \$100.

This proposal would set the fee for restoring a license in a retired status to an active status on a scale based on the time that has elapsed between the retired status being granted and the time the Board receives a written request for restoration and the restoration fee. The restoration fee begins at \$200 and increases by \$200 for every two years up to the maximum of \$1000.

8. Amend Section 71 in Title 16 of the California Code of Regulations.

This proposal would add an application for retired status to the list of applications that can be abandoned if the applicant fails to complete the application within two years of its original submission or within one year

of notification by the Board of any deficiency in the application.

9. Amend Section 87.1 in Title 16 of the California Code of Regulations.

This proposal would ensure that the CE requirements for restoring a license in a retired status to active status prior to renewal are the same as those for converting a license in an inactive status to an active status prior to renewal.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

This bill will create an absorbable fiscal impact to the California Board of Accountancy (CBA).

The CBA will experience a loss in renewal revenue through implementation of the retired status due to the large population of older licensees that will pursue the new option. Much of this loss in revenue will be offset by the same population paying for the \$100 retirement fees as well as delinquent licensees providing revenue in the first year when they wouldn't otherwise have done so. It is estimated that the CBA will lose approximately \$6 million in revenues during this initial 6-year period. The ongoing annual fiscal impact after this initial wave of retirements is projected to be a loss in revenues of approximately \$1 million.

Assumptions:

1. A "start date" of January 1, 2013.
2. The temporary renewal fee reduction of \$120 reverts to its original \$200 amount on July 1, 2015.
3. A licensee must have been practicing a minimum of 20 years to be eligible for the retired status.
4. Licensees who are 62 years of age or older are the population that will apply for the retired status. 50% of CBA licensees will retire upon reaching 62.
5. For each additional year of age, an additional 10% of the group will retire (or 20% of the remaining licensees who did not retire). For example, 60% of licensees 63 years of age will be retired. 70% of licensees 64 years of age will be retired.
6. All delinquent licensees age 62 or older (licensees that have no practice rights and do not pay renewal fees or complete continuing education) will opt for the retired status within the first year of implementation. The law has provisions which allow delinquent licensees to forgo paying any past renewal or delinquency fees if they opt for the retired status within the first year of implementation. Because this provision is only

available for the first year, it is not expected that any delinquent licensees will opt for the retired status in subsequent years.

7. The retired status application fee will be a one-time fee of \$100.
8. Licensees who opt for the retired status would have paid renewal fees for 3 renewal cycles (6 years) had there not been an option for the retired status.

Nondiscretionary Costs/Savings to Local Agencies:

None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: The only possibility of the proposal impacting businesses is if the application or restoration fees are paid for by a business. The CBA assumes that this will be an infrequent occurrence as this is not a normal cost of doing business.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are insignificant.

The population of licensees choosing to apply for retired status must have been in practice for at least 20 years or more. The licensee will need to pay a one-time \$100 fee to apply for "retired" status. Should the licensee desire to practice again, payment of fees up to a maximum of \$1,000 would need to be paid. The regulation permits a licensee to retire/restore twice, however once the licensee restores for the second time, a third retirement is not permitted. It is not expected that many retired licensees will restore their license to an active status and even less would be assumed for a second restoration. Any estimate of restoration fees will be statistically insignificant.

It is assumed that the population of licensees that will be eligible for retirement will be 62 years of age or older. The CBA anticipates a huge influx of individuals to opt for the retired status; in the first year (2013), the CBA projects over 14,000 licensees will retire.

After the initial wave of retirements, it is expected that the population of licensees opting for the retired status will stabilize to approximately 2,000 annually. The one-time retirement fees of \$100 will be offset by the individuals no longer having to pay biennial renewal fees which will be \$120 in 2013, and are expected to be \$200 every two years by the time this stabilization period occurs.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations may affect small businesses if the application or restoration fees are paid for by a business. The CBA is assuming that this will be an infrequent occurrence as this is not a normal cost of doing business.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, including Form 11R-48 (11/11), which is incorporated by reference in this rulemaking, are available on the Board's Internet website at http://www.dca.ca.gov/cba/laws_and_rules/pubpart.shtml and may also be obtained at the hearing or prior to

the hearing upon request from the California Board of Accountancy at 2000 Evergreen Street, Suite 250, Sacramento, California 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named in the following section.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named in the following section or by accessing the website listed in the following section.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Matthew Stanley
Address: California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone No.: 916-561-1792
Fax No.: 916-263-3678
E-Mail Address: mstanley@cba.ca.gov

The backup contact person is:

Name: Kari O'Connor
Address: California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone No.: 916-561-4311
Fax No.: 916-263-3678
E-Mail Address: koconnor@cba.ca.gov

Website Access: Materials regarding this proposal can be found at http://www.dca.ca.gov/cba/laws_and_rules/pubpart.shtml.

TITLE 16. CALIFORNIA BOARD OF ACCOUNTANCY

NOTICE IS HEREBY GIVEN that the California Board of Accountancy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at Crowne Plaza Irvine, 17941 Von Karman Avenue, Irvine, CA 92614, at 9:00 a.m. on January 27, 2012. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the California Board of Accountancy at its office not later

than 5:00 p.m. on January 23, 2012 or must be received by the California Board of Accountancy at the hearing. The California Board of Accountancy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 5010 of the Business and Professions Code; and to implement, interpret or make specific Sections 5051 and 5052 of the Business and Professions Code; the California Board of Accountancy is considering changes to Division 1 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Business and Professions Code §5051, describes what a person might do to be deemed practicing public accountancy in California, including preparing statements, making audits, or preparing reports, all as a part of bookkeeping operations for clients. Section 5051 also provides that only certain activities are considered the practice of public accountancy when performed by persons not licensed by the Board as certified public accountants or public accountants.

Existing law, Business and Professions Code §5052, exempts from licensure any person who contracts with another person or entity for the purpose of keeping books, making trial balances, statements, making audits or preparing reports, all as a part of bookkeeping operations, provided that such trial balances, statements, or reports are not issued over the name of such person as having been prepared or examined by a certified public accountant or public accountant.

Existing law, Section 4 of Title 16 of the California Code of Regulations, provides safe harbor letters for non-licensees of the Board to use when preparing financial statements as described therein. If the safe harbor letter accompanies such financial statements, the preparer is not deemed to be practicing public accountancy in California.

1. Amend Section 4 Title 16 of the California Code of Regulations.

This proposal would amend the safe harbor letters in Section 4 to clarify that the preparer of the attached financial statements is not licensed, nor required to be li-

censed, by the Board for the preparation of the attached statements. The proposal would add additional language to the letters to further clarify that if compiled, reviewed or audited financial statements are desired, the services of a licensee of the Board would be required.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

There would be no cost to the Board. The additional statements in the safe harbor letters are clarifying in nature and are not expected to have any fiscal impact.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: The Board does not believe that this regulatory proposal will have a significant adverse economic impact on businesses as it simply adds two sentences to an already prescribed safe harbor letter.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are insignificant.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations may affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise

been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons are available on the Board's Internet Web site at http://www.dca.ca.gov/cba/laws_and_rules/pubpart.shtml and may also be obtained at the hearing or prior to the hearing upon request from the California Board of Accountancy at 2000 Evergreen Street, Suite 250, Sacramento, California 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named in the following section.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named in the following section or by accessing the Web site listed in the following section.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Matthew Stanley
Address: California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone No.: 916-561-1792
Fax No.: 916-263-3678
E-Mail Address: mstanley@cba.ca.gov

The backup contact person is:

Name: Kari O'Connor
Address: California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone No.: 916-561-4311
Fax No.: 916-263-3678
E-Mail Address: koconnor@cba.ca.gov

Website Access: Materials regarding this proposal can be found at http://www.dca.ca.gov/cba/laws_and_rules/pubpart.shtml.

TITLE 22. OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

NOTICE OF PROPOSED RULEMAKING

California Coronary Artery Bypass Graft Outcomes Reporting Program

NOTICE IS HEREBY GIVEN that the Office of Statewide Health Planning and Development (OSHPD) proposes to amend Section 97174 of Title 22 of the California Code of Regulations (CCR).

The amendment of one section will add, delete and modify certain hospital reported data elements in the California Coronary Artery Bypass Graft Outcomes Reporting Program to conform to the national Society of Thoracic Surgeons database and to improve risk analysis and outcomes reporting.

PUBLIC HEARING

No public hearing is scheduled. Any interested person, or his or her duly authorized representative, may submit a written request for a public hearing, pursuant to Section 11346.8(a) of the Government Code. The written request for a hearing must be received by OSHPD's contact person, designated below, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD AND CONTACT PERSON

Any interested person may submit written comments relevant to the proposed regulatory action. All such comments must be received by OSHPD no later than 5:00 p.m. on January 23, 2012.

All inquiries and comments concerning the proposed regulations should be addressed to the primary contact person named below. Comments may be delivered by fax, e-mail, hand delivery, or mail to:

Holly Hoegh, Ph.D.
 Manager Clinical Data Programs
 Healthcare Outcomes Center
 Office of Statewide Health Planning and
 Development
 400 R Street, Room 250
 Sacramento, CA 95811-6213
 Tel: (916) 326-3868, Fax: (916) 322-9718
 E-mail: holly.hoegh@oshpd.ca.gov

Inquiries and comments may also be addressed to
 backup contact person:

Mary Moseley, M.A.
 Clinical Data Programs Contracts Manager
 Healthcare Outcomes Center
 Office of Statewide Health Planning and
 Development
 400 R Street, Room 250
 Sacramento, CA 95811-6213
 Tel: (916) 326-3867, Fax: (916) 322-9718
 E-mail: mary.moseley@oshpd.ca.gov

Each comment should include the author's name,
 U.S. Postal Service address, and email address, so that
 the addressee may be included in future communica-
 tions if the text of the currently proposed regulations
 changes.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 128810 of
 the California Health and Safety Code, OSHPD pro-
 poses to amend Section 97174 of Chapter 10 of Divi-
 sion 7 of Title 22 of the California Code of Regulations,
 which would implement, interpret, or make specific
 Section 128745 of the Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In accordance with Health and Safety Code Section
 128745, the Office of Statewide Health Planning and
 Development each year prepares and publishes annual
 risk-adjusted outcome reports for coronary artery by-
 pass graft (CABG) surgeries performed in California
 hospitals. The program, known as the California CABG
 Outcomes Reporting Program (CCORP), collects data
 from each hospital in which CABG surgeries are per-
 formed, on each CABG patient. Currently, CABG sur-
 geries are performed in 120 hospitals. The reported data
 includes demographic and clinical data elements from
 the patient medical record. The Office analyzes the
 data, along with data collected from other sources, and
 prepares the risk-adjusted outcome reports that

compare outcomes by hospital and, in every other year,
 by hospital and cardiac surgeon.

Health and Safety Code Sections 128745 and 128748
 provide for the appointment of a 9-member clinical
 panel to advise the Office on aspects of the CABG pro-
 gram. The Office must seek the recommendations of the
 clinical panel before making changes to the data ele-
 ments collected for CCORP.

The clinical panel may recommend to the Office the
 addition of any element that is included in the Society of
 Thoracic Surgeons (STS) database. The Society is the
 industry leader in defining and establishing data ele-
 ments related to adult cardiac surgery. STS has its own
 data programs and maintains a data base for CABG sur-
 gery. Seventy-five percent of California hospitals use
 the STS database.

In addition, the clinical panel may recommend that
 the Office add, delete or revise data elements that are
 not in the STS data base, but the Office may not add
 more than a net of 6 elements that are not in the STS data
 base over any five-year period. CCORP has only added
 one non-STS element in the last five years, and this pro-
 posal also adds one non-STS element for a total of two
 in the last five years.

The CCORP data elements are defined in section
 97174 of Title 22. The Office proposes to amend section
 97174, to add, delete, and revise data elements to be re-
 ported. The changes will update the CCORP data, con-
 sistent with changes in the STS database. The changes
 are proposed to provide the data necessary for better
 analysis and outcomes reporting. The current data ele-
 ments will continue to apply for any patients discharged
 before July 1, 2011. The new language will apply for
 discharges on and after that date.

The additions and changes to data elements reflected
 in these regulatory changes were recommended by the
 Clinical Advisory Panel at its May 24, 2011 meeting. In
 addition, the California Health Policy and Data Adviso-
 ry Commission, which advises the Office on changes to
 various data programs under the Health Data and Advi-
 sory Council Consolidation Act (Health and Safety
 Code section 128675 et seq.), advised the Office to
 adopt the proposed amendments at its August 5, 2011
 meeting.

OSHPD has determined that there are no comparable
 federal regulations, and the proposed changes are not
 mandated by federal law or regulations.

OSHPD has determined that the regulations have
 been drafted in plain English.

The proposed amendment to section 97174 consists
 of adding data elements to be collected for discharges
 beginning July 1, 2011. Data elements collected
 through June 30, 2011 remain in section 97174.

DETERMINATIONS REGARDING THE
PROPOSED ACTION

OSHPD has made the following initial determinations:

1. Local mandate: None.
2. Estimated costs or savings to any state agency: The estimated cost to the Office is \$16,232 for programming the online reporting system for the revised data elements.
3. Costs to any local agency or school district that is required to be reimbursed by the state in accordance with Government Code Sections 17500 through 17630: None. Local agencies and schools do not report data to OSHPD.
4. Non-discretionary cost or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Significant impact on housing costs: None.
7. Potential cost impact on private persons or affected businesses: The estimated annual increased cost per hospital for CCORP reporting with the proposed regulatory change is \$518.75.
8. Potential significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: OSHPD has determined that the regulations would not have a significant impact.
9. OSHPD has determined that the regulations would not significantly affect the following:
 - 1) The creation or elimination of jobs within the State of California.
 - 2) The creation of new businesses or elimination of existing businesses within the State of California.
 - 3) The expansion of businesses currently doing business within the State of California.
10. Business reporting requirement: Hospitals are required by statute to report CABG surgery data elements to OSHPD. These regulatory changes update the data reported. The OSHPD finds that it is necessary for the health, safety or welfare of the people of the state that the amended regulation apply to businesses.
11. Small business determination: The proposed regulatory action does not affect small business. The health care facilities affected by the action either have more than 150 beds or more than

\$1,500,000 in annual gross receipts. In accordance with Government Code Section 11342.610, these health care facilities are not defined as small businesses.

ALTERNATIVES CONSIDERED

OSHPD must determine in accordance with Government Code Section 11346.5(a)(13) that no reasonable alternative considered by OSHPD or that has otherwise been identified and brought to the attention of OSHPD would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS

OSHPD has prepared an Initial Statement of Reasons for the proposed regulations. This statement, the express terms of the proposed regulations, and the information on which the proposal is based, are available by contacting the primary contact person listed earlier. In addition, the Initial Statement of Reasons and the proposed text amendments, additions, and elimination are available on the OSHPD website, www.oshpd.ca.gov under the Data & Reports tab, CORC link.

AVAILABILITY OF CHANGED
OR MODIFIED TEXT

After considering all timely and relevant comments received, the Office may adopt the proposed regulations substantially as described in this Notice. If the Office makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Office adopts the regulations as revised. Please send requests for copies of any modified regulations to the contact person as listed in this Notice. The Office will accept written comments regarding potential modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF
REASONS AND RULEMAKING FILE

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the primary contact person as listed in this Notice. The complete Rulemaking File will be available for review from the primary contact person.

GENERAL PUBLIC INTEREST

DEPARTMENT OF HEALTH CARE SERVICES

NOTICE OF GENERAL PUBLIC INTEREST

THE DEPARTMENT OF HEALTH CARE SERVICES TO EXTEND THE MEDI-CAL TEN PERCENT PROVIDER PAYMENT REDUCTION FOR SERVICES PROVIDED BY ADULT DAY HEALTH CARE CENTERS

This notice provides information of public interest about the extension of the ten percent payment reduction for Adult Day Health Care (ADHC) Centers, which is effective for dates of service on or after June 1, 2011, as authorized by Assembly Bill 97 (Chapter 3, Statutes of 2011). A Notice of General Public Interest regarding this payment reduction was previously published in May 2011.

The California Department of Health Care Services (DHCS) recently settled a lawsuit that challenged the elimination of the optional ADHC benefit. The settlement provides for an extension of the elimination of the ADHC benefit until March 1, 2012. Therefore, the application 10 percent payment reduction on payments to ADHC providers shall be extended through February 29, 2012.

PUBLIC REVIEW AND COMMENTS

The California statutes discussed above are available for public review at welfare offices in every county of the State. Written comments (or requests for copies of the statutes and/or copies of the written comments) may be submitted to: Linda Machado, Chief, Provider Rate Section; Medi-Cal Benefits, Waiver Analysis, and Rates Division; Department of Health Care Services; MS 4600; P.O. Box 997417; Sacramento, CA 95899-7417.

DECISION NOT TO PROCEED

CORRECTIONS STANDARDS AUTHORITY

Notice of Decision Not To Proceed

Title 15, Division 1, Chapter 1, Subchapter 6 2007 Local Jail Construction Funding Program

Pursuant to Government Code section 11347, the Corrections Standards Authority hereby gives notice

that it has decided not to proceed with the rulemaking action published in the California Regulatory Notice Register on November 25, 2011 (Register 2011, No. 47-Z, p. 1892) under OAL File Number Z2011-1115-04.

This notice will also be posted on the department's Internet website at <http://www.cdcr.ca.gov/CSA/index.html>.

For questions or information regarding this notice, please contact Charlene Aboytes at 916.324.1914 or by email at charlene.aboytes@cdcr.ca.gov.

OAL REGULATORY DETERMINATION

OFFICE OF ADMINISTRATIVE LAW

DETERMINATION OF ALLEGED UNDERGROUND REGULATION (Summary Disposition)

(Pursuant to Government Code Section 11340.5 and Title 1, section 270, of the California Code of Regulations)

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: November 29, 2011
To: Jerry Pollard
From: Chapter Two Compliance Unit
Subject: **2011 OAL DETERMINATION NO. 25(S)**
(CTU2011-1017-02)
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation California Code of Regulations, title 15, sections 3269 and 3315(f)(5)(N)(1) and (2) relating to inmate housing assignments

On October 17, 2011, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether California Code of Regulations, title 15, sections 3269 and 3315(f)(5)(N)(1) and (2) are underground regulations. These two sections of the California Code of Regulations relate to inmate housing assignments and are attached hereto at Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).²

If a rule meets the definition of a regulation in Government Code section 11342.600, but was not adopted pursuant to the APA, it may be an “underground regulation” as defined in California Code of Regulations, title 1, section 250:

The following definitions shall apply to the regulations contained in this chapter: (a) “Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, *but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA* and is not subject to an express statutory exemption from adoption pursuant to the APA. . . (Emphasis added.)

The sections you challenge as underground regulations, California Code of Regulations, title 15, sections 3269 and 3315(f)(5)(N)(1) and (2) are properly adopted regulations and filed with the Secretary of State pursuant to the APA. Section 3269 was originally filed with the Secretary of State as an emergency regulation on March 18, 2008. The Certificate of Compliance for this emergency adoption was filed on September 15, 2008. The section was amended without regulatory effect on March 28, 2011. No other amendments have been made.

Section 3315 was initially filed with the Secretary of State prior to 1977. Subdivision (f)(5)(N)(1) and (2) was filed in the same emergency adoption with the Secretary of State on March 18, 2008. The Certificate of Compliance for this emergency adoption was filed with the Secretary of State on September 15, 2008.

¹ “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

² Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

For the reasons discussed above, we find that the rule challenged by your petition is not an underground regulation.³

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/

Debra M. Cornez
Assistant Chief Counsel/
Acting Director

/s/

Kathleen Eddy
Senior Counsel
Copy: Matthew Cate

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

³ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) *The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.*

(D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.

(Emphasis added.)

File# 2011-1017-02

**CALIFORNIA HORSE RACING BOARD
Jockey's Riding Fee**

This change without regulatory effect raises non-winning jockey riding fees in accordance with Assembly Bill 649, Chapter 605, Statutes of 2007.

Title 4

California Code of Regulations

AMEND: 1632

Filed 11/28/2011

Agency Contact: Harold Coburn (916) 263-6397

File# 2011-1014-05

**DEPARTMENT OF FOOD AND AGRICULTURE
Melon Fruit Fly Eradication Area**

This Certificate of Compliance rulemaking makes permanent the prior emergency addition of Fresno County to the Melon Fruit Fly Eradication Area.

Title 3

California Code of Regulations

AMEND: 3591.15(a)

Filed 11/29/2011

Agency Contact:

Stephen S. Brown (916) 654-1017

File# 2011-1025-02

**OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT**

Proposition 65 — Electronic Notice (AG)

This rulemaking action amends existing procedures governing service of a 60 day notice under Proposition 65 by establishing an alternative procedure for serving notices on the Attorney General via electronic mail, if the Attorney General has consented to that method of service.

Title 27

California Code of Regulations

AMEND: 25903(c)

Filed 11/28/2011

Effective 12/28/2011

Agency Contact: Monet Vela (916) 323-2517

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN July 6, 2011 TO
November 30, 2011**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For fur-

ther information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

11/22/11 AMEND: 559

11/08/11 ADOPT: 18421.31

10/27/11 AMEND: 18404.1

10/26/11 ADOPT: 18237

10/18/11 AMEND: 1859.166.2

10/17/11 AMEND: 25001

10/12/11 AMEND: 59690

10/05/11 ADOPT: 649.21

09/27/11 ADOPT: 599.506(f) AMEND:
599.502(f)

09/21/11 AMEND: 1859.90.2

09/08/11 AMEND: 1859.2, 1859.82

09/07/11 ADOPT: 10000, 10001, 10002, 10003,
10004, 10005, 10006, 10007, 10008,
10009, 10010, 10011, 10012, 10013,
10014, 10015, 10016, 10017, 10018,
10019, 10020, 10021, 10022, 10023,
10024, 10025, 10026, 10027, 10028,
10029, 10030, 10031, 10032, 10033,
10034, 10035, 10036, 10037, 10038,
10039, 10040, 10041, 10042, 10043,
10044, 10045, 10046, 10047, 10048,
10049, 10050, 10051, 10052, 10053,
10054, 10055, 10056, 10057, 10058,
10059, 10060, 10061, 10062, 10063,
10064, 10065, 10066

09/06/11 AMEND: 29000

09/01/11 ADOPT: 58600 REPEAL: 58600

09/01/11 AMEND: 54200

09/01/11 AMEND: 54600

08/08/11 ADOPT: 59700

07/27/11 AMEND: 1859.90.2, 1859.81

07/15/11 AMEND: 1151, 1153, 1155.500, 1165,
1170, 1172.20

07/11/11 ADOPT: 21903.5 AMEND: 21903

07/11/11 ADOPT: 570.5 AMEND: 571(b)

07/06/11 AMEND: 1859.2, 1859.81, 1859.148.2,
1859.166.2

07/06/11 AMEND: 18360

Title 3

11/29/11 AMEND: 3591.15(a)

11/14/11 AMEND: 3437(b)

11/10/11 AMEND: 6000, 6361, 6400, 6460, 6464,
6470, 6502, 6512, 6524, 6560, 6562,
6564, 6625, 6626, 6625, 6632, 6728,
6761, 6780

11/10/11 AMEND: 3589(a)

10/26/11 AMEND: 1430.142

10/19/11 AMEND: 3423(b)

10/12/11	AMEND: 3906		AMEND: 11960, 11965, 11969
10/10/11	ADOPT: 3591.25		(renumbered 11968.1), 11969.1
10/10/11	AMEND: 3423(b)	10/27/11	ADOPT: 4800, 4800.1, 4800.3, 4800.5, 4801, 4802, 4802.05, 4802.1, 4802.2, 4803, 4804, 4805, 4806, 4807, 4808
09/29/11	AMEND: 3434(b)(8)		
09/28/11	AMEND: 3425(b)	10/24/11	ADOPT: 11966.4, 11966.5, 11966.6, 11966.7 AMEND: 11967, 11967.5.1
09/19/11	AMEND: 3423(b)		
09/15/11	AMEND: 3591.2(a)	10/18/11	ADOPT: 10120.1, 10121
09/07/11	AMEND: 3591.2(a)	09/22/11	ADOPT: 80069.2 AMEND: 80070
08/23/11	ADOPT: 6131 AMEND: 6128, 6130	09/19/11	ADOPT: 30001.5
08/23/11	ADOPT: 1392.4.1 AMEND: 1392, 1392.1, 1392.2, 1392.4, 1392.6, 1392.8.1, 1392.9, 1392.11	09/19/11	ADOPT: 74112, 75020, 75030, 75040, 75050, 75150, 75200, 75210 AMEND: 74110
08/03/11	AMEND: 3437(b)	08/15/11	ADOPT: 19817.2, 19817.5, 19840, 19846.1 AMEND: 19815, 19816, 19816.1, 19817.1, 19846
07/28/11	REPEAL: 1400.9.1		
07/15/11	AMEND: 3434(b)	08/15/11	ADOPT: 40050.2
07/15/11	AMEND: 3589	08/15/11	ADOPT: 40050.3
07/15/11	REPEAL: 3286	08/15/11	AMEND: 40100.1
07/08/11	AMEND: 3658	08/15/11	AMEND: 40404
07/05/11	ADOPT: 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7, 3701.8 AMEND: 3407	08/15/11	AMEND: 40405.1
Title 4		08/15/11	ADOPT: 40509
11/28/11	AMEND: 1632	08/15/11	ADOPT: 40513
11/07/11	AMEND: 8070, 8072, 8073, 8074	08/15/11	ADOPT: 40514
11/03/11	AMEND: 10152, 10153, 10154, 10155, 10157, 10159, 10160, 10161, 10162 REPEAL: 10156, 10158, 10164	08/15/11	ADOPT: 40515
10/04/11	AMEND: 1658	08/15/11	ADOPT: 40516
09/30/11	AMEND: 12100, 12101, 12200.3, 12200.5, 12200.6, 12200.9, 12200.10B, 12200.14, 12202, 12205.1, 12218, 12218.7, 12218.8, 12220.3, 12220.5, 12220.6, 12220.14, 12222, 12225.1, 12233, 12235, 12238, 12300, 12301.1, 12309, 12350, 12354, 12358, 12359, 12362, 12400, 12404, 12463, 12464	08/15/11	ADOPT: 41021
09/28/11	ADOPT: 8035.5	08/15/11	ADOPT: 41022
09/20/11	AMEND: 12590	08/04/11	ADOPT: 1039.1
09/07/11	ADOPT: 1500.1 AMEND: 1498	08/04/11	AMEND: 80047, 80047.1, 80047.2, 80047.3, 80047.4, 80047.5, 80047.6, 80047.7, 80047.8, 80047.9, 80048.6
08/16/11	ADOPT: 8078.2 AMEND: 8070, 8072, 8073, 8074	Title 7	
08/10/11	ADOPT: 10030, 10031, 10032, 10033, 10034, 10035, 10036, 10037	08/16/11	AMEND: 218
07/27/11	AMEND: 5064	Title 8	
07/21/11	ADOPT: 1844.1	11/07/11	AMEND: 6051
07/20/11	AMEND: 4800, 4801, 4802	10/27/11	ADOPT: 2320.10, 2940.10 AMEND: 1512, 3400
07/20/11	AMEND: 150	10/17/11	AMEND: 230.1(a)
07/12/11	AMEND: 1606, 1974, 1954.1, 1957, 1959, 1976, 1976.8, 1976.9, 1977, 1978, 1979, 1979.1	10/17/11	ADOPT: 207.1 AMEND: 201, 202, 203, 207
Title 5		09/19/11	AMEND: 15201, 15214, 15251, 15300, 15400.2, 15405, 15430.1, 15478, 15481, 15484
11/16/11	ADOPT: 11968.5.1, 11968.5.2, 11968.5.3, 11968.5.4, 11968.5.5	09/06/11	AMEND: 8608
		08/29/11	AMEND: 1504, 3207
		08/10/11	ADOPT: 3302 AMEND: 3308
		08/05/11	ADOPT: 1603.1 AMEND: 1504, 1600, 1602, 1603
		08/01/11	AMEND: 16423 REPEAL: 16450, 16451, 16452, 16453, 16454, 16455, 16460, 16461, 16462, 16463, 16464
		07/28/11	ADOPT: 6799.1 AMEND: 6755

07/07/11	ADOPT: 1610 (section heading), 1610.1, 1610.2, 1610.3, 1610.4, 1610.5, 1610.6, 1610.7, 1610.8, 1610.9, 1611 (section heading), 1611.1, 1611.2, 1611.3, 1611.4, 1611.5, 1612 (section heading), 1612.1, 1612.2, 1612.3, 1612.4, 1613 (section heading), 1613.1, 1613.2, 1613.3, 1613.4, 1613.5, 1613.6, 1613.7, 1613.8, 1613.9, 1613.10, 1614, 1615 (section heading), 1615.1, 1615.2, 1616 (section heading), 1616.1, 1616.2, 1616.3, 1616.4, 1616.5, 1616.6, 1616.7, 1617 (section heading), 1617.1, 1617.2, 1617.3, 1618 (section heading), 1618.1, 1618.2, 1618.3, 1618.4, 1619 (section heading), 1619.1, 1619.2, 1619.3, 1619.4, 1619.5 AMEND: 1694, 2940.7, 6060	Title 13 11/22/11 AMEND: 1956.8 11/17/11 AMEND: 1233 11/09/11 AMEND: 2027 11/08/11 AMEND: 1 10/07/11 ADOPT: 345.03, 345.75, 345.76, 345.77 09/15/11 AMEND: 2190 08/23/11 ADOPT: 345.00 AMEND: 345.02, 345.04, 345.15, 345.18, 345.20, 345.22, 345.23, 345.26 08/16/11 AMEND: 1800 07/06/11 ADOPT: 1231.2 AMEND: 1200, 1201, 1217, 1221, 1222, 1232
Title 9 10/04/11 ADOPT: 7016.1, 7019.6, 7025.7, 7028.7, 7179.7 AMEND: 7098, 7179.1, 7181.1 08/08/11 ADOPT: 4500, 4510, 4520	Title 13, 17 10/27/11 AMEND: 2299.2, 93118.2	Title 14 11/22/11 AMEND: 791.7, 870.17 11/17/11 AMEND: 163, 164 11/15/11 AMEND: 700.4, 701, 705 REPEAL: 704 10/05/11 AMEND: 913.4, 933.4, 953.4, 959.15 REPEAL: 939.15 10/05/11 AMEND: 913.4, 933.4, 953.4, 959.15 REPEAL: 939.15 10/04/11 AMEND: 29.15 09/28/11 AMEND: 11900 09/22/11 AMEND: 565, 565.4, 566, 566.1, 569, 570, 571, 572, 573, 576, 583, 593, 598.60, 599 09/22/11 AMEND: 7.50(b)(1.5), 27.65, 29.80 09/16/11 AMEND: 11900, 11970 09/08/11 AMEND: 300, 311 08/30/11 ADOPT: 3550.16 08/29/11 AMEND: 502 08/08/11 ADOPT: 1052.5 AMEND: 895, 916.9, 936.6, 956.9, 1052, 1052.1, 1052.2 08/03/11 ADOPT: 1051.3, 1051.4, 1051.5, 1051.6, 1051.7 AMEND: 895 07/22/11 AMEND: 852.60.2, 852.60.3, 852.60.4, 852.61.1, 852.61.2, 852.61.3, 852.61.5, 852.61.6, 852.61.7, 852.61.8, 852.61.9, 852.61.10, 852.61.11, 852.61.12, 852.62.1, 852.62.2, 852.62.3 07/14/11 AMEND: 791, 791.7, 792, 793, 794, 795, 796 REPEAL: 791.5 07/12/11 ADOPT: 749.6 07/08/11 ADOPT: 708.1, 708.2, 708.3, 708.4, 708.5, 708.6, 708.7, 708.8, 708.9, 708.10, 708.11, 708.12, 708.13, 708.14, 708.15, 708.16, 708.17 AMEND: 360, 361, 362, 363, 364, 365, 366, 353, 354, 478.1, 702, 711 REPEAL: 708
Title 10 11/21/11 ADOPT: 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596 10/20/11 AMEND: 2222.12 09/26/11 ADOPT: 2785 09/26/11 ADOPT: 2830 09/26/11 ADOPT: 2725.5, 2960, 2961, 2962, 2963 AMEND: 2930 09/22/11 AMEND: 2318.6, 2353.1 09/22/11 AMEND: 2318.6, 2353.1, 2354 08/11/11 AMEND: 2731 08/01/11 AMEND: 3012.3 07/27/11 AMEND: 2770.1, 2847.3 07/25/11 AMEND: 2222.12 07/13/11 AMEND: 210, 221 07/08/11 AMEND: 2699.6707 07/07/11 AMEND: 260.204.9		Title 15 11/14/11 AMEND: 3341.5, 3375.2, 3377.1
Title 11 11/14/11 AMEND: 1008 11/01/11 AMEND: 1009 10/25/11 AMEND: 1005, 1007, 1008 10/07/11 ADOPT: 999.24, 999.25, 999.26, 999.27, 999.28, 999.29 AMEND: 999.10, 999.11, 999.14, 999.16, 999.17, 999.19, 999.20, 999.21, 999.22 10/06/11 AMEND: 30.14 10/06/11 ADOPT: 30.16 09/28/11 AMEND: 1081 09/28/11 AMEND: 1005 09/02/11 ADOPT: 101.2 09/02/11 AMEND: 101.1		

11/10/11 ADOPT: 3359.1, 3359.2, 3359.3, 3359.4,
3359.5, 3359.6 AMEND: 3000
10/25/11 ADOPT: 2240
10/06/11 REPEAL: 3999.7
09/27/11 ADOPT: 3078, 3078.1, 3078.2, 3078.3,
3078.4, 3078.5, 3078.6 AMEND: 3000,
3043, 3075.2, 3097, 3195, 3320, 3323
08/16/11 ADOPT: 3769, 3769.1, 3769.2, 3769.3,
3769.4, 3769.5, 3769.6
08/03/11 AMEND: 3000
07/28/11 ADOPT: 3084.8, 3084.9, 3086 AMEND:
3000, 3084, 3084.1, 3084.2, 3084.3,
3084.4, 3084.5, 3084.6, 3084.7, 3137,
3173.1, 3179, 3193, 3220.4, 3482, 3630,
3723 REPEAL: 3085
07/19/11 AMEND: 3090, 3176.4, 3315, 3323
07/07/11 ADOPT: 3076.4, 3076.5 AMEND: 3076,
3076.1, 3076.2, 3076.3

Title 16

11/22/11 ADOPT: 858, 858.1, 858.2, 858.3, 858.4,
858.5, 858.6, 858.7, 858.8, 858.9
11/16/11 AMEND: 950.1, 950.4, 950.5 REPEAL:
962.3, 962.4, 962.5, 962.6
11/01/11 ADOPT: 3392.2.1, 3392.3.1, 3392.4,
3392.5.1, 3392.6.1 AMEND: 3340.1,
3340.16, 3340.16.5, 3340.41, 3392.1,
3392.2, 3392.3, 3392.5, 3392.6
10/25/11 REPEAL: 929
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